THE CITY OF COMMERCE, GEORGIA

CODE ORDINANCES



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CHAPTER 1
CHARTER[1]

ARTICLE I. INCORPORATION AND POWERS

Section 1.10. Name.

This city and the inhabitants thereof are constituted and declared a body politic and corporate under the name and style City of Commerce, Georgia, and by that name shall have perpetual succession.

Section 1.11. Corporate boundaries.

(a) The boundaries of this city shall be those existing on the effective date of the adoption of this charter with such alterations as may be made from time to time in the manner provided by law. The boundaries of this city at all times shall be shown on a map, a written description, or any combination thereof, to be retained permanently in the office of the city clerk of the city and to be designated, as the case may be: "Official Map or Description of the Corporate Limits of the City of Commerce, Georgia." Photographic, typed, or other copies of such map or description certified by the mayor shall be admitted as evidence in all courts and shall have the same force and effect as the original map or description.

(b) The city council may provide for the redrawing of any such map by ordinance to reflect lawful changes in the corporate boundaries. A redrawn map shall supersede for all purposes the entire map or maps which it is designated to replace.

Section 1.12. Municipal powers.

(a) This city shall have all powers possible for a city to have under the present or future constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter. This city shall have all the powers of self-government not otherwise prohibited by this charter or by general law or by the constitution of the State of Georgia.

(b) The powers of this city shall be construed liberally in favor of the city. The specific mention or failure to mention particular powers shall not be construed as limiting in any way the powers of this city. Said powers shall include, but are not limited to, the following:

(1) *Air and water pollution.* To regulate the emission of smoke or other exhaust which pollutes the air and to prevent the pollution of natural streams which flow within the corporate limits of the city and to establish regulations to prohibit noise pollution;

(2) *Animal regulations.* To regulate and license or to prohibit the keeping or running at large of animals and fowl and to provide for the impoundment of same if in violation of any ordinance or lawful order; to provide for the disposition by sale, gift, or humane destruction of animals and fowl when not

[1]Editor's note(s)—Printed herein is the city's Charter as set forth in 1991 Ga. Laws, page 4042. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original act. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Original section numbers have been retained for consistency with the original act. Additions made for clarity are indicated by brackets.

redeemed as provided by ordinance; and to provide punishment for violation of ordinances enacted under this paragraph;

(3) *Appropriations and expenditures.* To make appropriations for the support of the government of the city; to authorize the expenditure of money for any purposes authorized by this charter and for any purpose for which a municipality is authorized by the laws of the State of Georgia; and to provide for the payment of expenses of this city;

(4) *Building regulations.* To regulate and to license the erection and construction of buildings and all other structures; to adopt building, housing, plumbing, electrical, gas, and heating and air-conditioning codes; and to regulate all housing and building trades except as otherwise prohibited by general law;

(5) *Business regulation and taxation.* To levy and to provide for the collection of license fees and taxes on privileges, occupations, trades, and professions; to license and regulate the same; to provide for the manner and method of payment of such licenses and taxes; and to revoke such licenses after due process for the failure to pay any city taxes or fees;

(6) *Condemnation.* To condemn property, inside or outside the corporate limits of the city, for present or future use and for any corporate purpose deemed necessary by the governing authority, utilizing procedures enumerated in O.C.G.A. title 22 or such other laws as are or may hereafter be enacted;

(7) *Contracts.* To enter into contracts and agreements with other governments and entities and with private persons, firms, and corporations;

(8) *Emergencies.* To establish procedures for determining and proclaiming that an emergency situation exists inside or outside the city and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health, or well-being of the citizens of the city;

(9) *Fire regulations.* To fix and establish fire limits and from time to time extend, enlarge, or restrict the same; to prescribe fire safety regulations, not inconsistent with general law relating to both fire prevention and detection and to firefighting; and to prescribe penalties and punishment for violations thereof;

(10) *Garbage fees.* To levy, fix, assess, and collect a garbage, refuse, and trash collection and disposal and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business within the city and benefiting from such services; to enforce the payment of such charges, taxes, or fees; and to provide for the manner and method of collecting such service charges;

(11) *General health, safety, and welfare.* To define, regulate, and prohibit any act, practice, conduct, or use of property which is detrimental to the health, sanitation, cleanliness, welfare, and safety of the inhabitants of the city and to provide for the enforcement of such standards;

(12) *Gifts.* To accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to the powers and duties of the city and the general welfare of its citizens on such terms and conditions as the donor or grantor may impose;

(13) *Health and sanitation.* To prescribe standards of health and sanitation within the city and to provide for the enforcement of such standards;

(14) *Jail sentences.* To provide that persons given jail sentences in the municipal court may work out such sentences in any public works or on the streets, roads, drains, and squares in the city; to provide for the commitment of such persons to any jail; or to provide for the commitment of such persons to any county work camp or county jail by agreement with the appropriate county officials;

(15) *Motor vehicles.* To regulate the operation of motor vehicles and exercise control over all traffic, including parking, upon or across the streets, roads, alleys, and walkways of the city;

(16) *Municipal agencies and delegation of power.* To create, alter, or abolish departments, boards, offices, commissions, and agencies of the city and to confer upon such agencies the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same;

(17) *Municipal debts.* To appropriate and borrow money for the payment of debts of the city and to issue bonds for the purpose of raising revenue to carry out any project, program, or venture authorized by this charter or the laws of the State of Georgia;

(18) *Municipal property ownership.* To acquire, dispose of, and hold in trust or otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or outside the property limits of the city;

(19) *Municipal property protection.* To provide for the preservation and protection of property and equipment of the city and the administration and use of same by the public; and to prescribe penalties and punishment for violations thereof;

(20) *Municipal utilities.* To acquire, lease, construct, operate, maintain, sell, and dispose of public utilities, including, but not limited to, a system of waterworks, sewers, and drains, sewage disposal, gas works, electric plants, transportation facilities, public airports, and any other public utility; and to fix the taxes, charges, rates, fares, fees, assessments, regulations, and penalties therefor; and to provide for the withdrawal of service for refusal or failure to pay the same; and to install and operate any of its utilities inside and outside its corporate limits in Jackson County, Georgia; and to install and operate any of its utilities in adjoining counties pursuant to existing and future franchise agreements or utility supply contracts;

(20.1) *Telecommunications.* The city shall have the power and authority to acquire, own, hold, lease, sell, resell, build, maintain, operate and contract with respect to a telecommunications systems network in order to provide telecommunications services and similar other services, including cable television services (CATV), to establish and charge rates, fees, tolls and charges for the services, facilities or commodities furnished or made available by such undertaking; to interconnect its system or services or both with the systems or services of consumers and other providers, to use telecommunications to respond to community needs, encourage the development of information-based organizations in the City of Commerce, Georgia, to finance from time to time any such telecommunications systems through the issuance of revenue bonds as then permitted by the Constitution and laws of the State of Georgia; and to make any contract with respect to and furnish the services of any said systems to consumers within or outside the corporate limits of the city.

(21) *Nuisances.* To define a nuisance and provide for its abatement whether on public or private property;

(22) *Penalties.* To provide penalties for violation of any ordinances adopted pursuant to the authority of this charter and the laws of the State of Georgia;

(23) *Planning and zoning.* To provide comprehensive city planning for development by zoning and to provide subdivision regulation and the like as the city council deems necessary and reasonable to ensure a safe, healthy, and aesthetically pleasing community;

(24) *Police and fire protection.* To exercise the power of arrest through duly appointed police officers and to establish, operate, or contract for a police and a firefighting agency;

(25) *Public hazards; removal.* To provide for the destruction and removal of any building or other structure which is or may become dangerous or detrimental to the public;

(26) *Public improvements.* To provide for the acquisition, construction, building, operation, and maintenance of public ways, parks, playgrounds, recreational facilities, cemeteries, markets and market houses, public buildings, libraries, public housing, airports, hospitals, terminals, docks, parking facilities, or charitable, cultural, educational, recreational, conservation, sport, curative, corrective, detentional, penal, and medical institutions, agencies, and facilities; to provide any other public improvements inside or outside the corporate limits of the city; to regulate the use of public

improvements; and, for such purposes, property may be acquired by condemnation under O.C.G.A. title 22 or such other applicable laws as are or may hereafter be enacted;

(27) *Public peace.* To provide for the prevention and punishment of drunkenness, riots, and public disturbances;

(28) *Public transportation.* To organize and operate or contract for such public transportation systems as are deemed beneficial;

(29) *Public utilities and services.* To grant franchises or make contracts for public utilities and public services and to prescribe the rates, fares, regulations, and the standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with valid regulations of the public service commission, and to own and operate its own franchises for the delivery of such services including cable television and related services;

(30) *Regulation of roadside areas.* To prohibit or regulate and control the erection, removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings, and any and all other structures or obstructions upon or adjacent to the rights-of-way of streets and roads or within view thereof, inside or abutting the corporate limits of the city and to prescribe penalties and punishment for violation of such ordinances;

(31) *Retirement.* To provide and maintain a retirement plan for officers and employees of the city;

(32) *Roadways.* To lay out, open, extend, widen, narrow, establish or change the grade of, abandon or close, construct, pave, curb, gutter, adorn with shade trees, or otherwise improve, maintain, repair, clean, prevent erosion of, and light the roads, alleys, and walkways within the corporate limits of the city; and to grant franchises and rights-of-way throughout the streets and roads and over the bridges and viaducts for the use of public utilities; and to require real estate owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands and to impose penalties for failure to do so;

(33) *Sewer fees.* To levy a fee, charge, or sewer tax as necessary to assure the acquiring, constructing, equipping, operating, maintaining, and extending of a sewage disposal plant and sewerage system; to levy on those to whom sewers and sewerage systems are made available a sewer service fee, charge, or tax for the availability or use of the sewers; to provide for the manner and method of collecting such service charge and for enforcing payment of the same; and to charge, impose, and collect a sewer connection fee or fees to those connected with the system;

(34) *Solid waste disposal.* To provide for the collection and disposal of garbage, rubbish, and refuse and to regulate the collection and disposal of garbage, rubbish, and refuse by others; and to provide for the separate collection of glass, tin, aluminum, cardboard, paper, and other recyclable materials and provide for the sale of such items;

(35) *Special areas of public regulation.* To regulate or prohibit junk dealers, pawnshops, the manufacture, sale, or transportation of intoxicating liquors, and the use and sale of firearms; to regulate the transportation, storage, and use of combustible, explosive, and inflammable materials, the use of lighting and heating equipment, and any other business or situation which may be dangerous to persons or property; to regulate and control the conduct of peddlers and itinerant traders, theatrical performances, exhibitions, and shows of any kind, by taxing or otherwise; and to license, tax, regulate, or prohibit professional fortune telling, palmistry, adult bookstores, and massage parlors;

(36) *Special assessments.* To levy and provide for the collection of special assessments to cover the costs of any public improvement;

(37) *Ad valorem taxes.* To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation;

(38) *Other taxes.* To levy and collect such other taxes as may be allowed now or in the future by law;

(39) *Taxicabs.* To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to regulate the parking of such vehicles;

(40) *Independent school system.*

(A) The public school system of the City of Commerce was initially established on November 26, 1901, by Sections 41 through 45 of the Act incorporating the City of Harmony Grove, predecessor to the City of Commerce, and reenacted as Section 40 of the Act of 1909, page 674. The City of Commerce shall retain all of those powers and rights set forth in those predecessor Acts as an independent public school system. The City of Commerce shall have the power to establish and operate a complete public school system, including such facilities and programs as are deemed necessary by the Commerce City Board of Education.

(B) The Commerce City Board of Education which was appointed and which existed on January 1, 2003, is continued in existence but on and after January 1, 2004, shall be constituted as provided in this paragraph. The board of education of the independent school system of the City of Commerce so continued and constituted, sometimes referred to in this section as the 'board,' shall continue to have the powers, duties, rights, obligations, and liabilities of the Commerce City Board of Education as existed immediately prior to January 1, 2004, and shall be subject to all constitutional and statutory provisions relating to boards of education and not in conflict with this section.

(C) The members of the board of education representing Education Districts 3, 4, and 5 who are in office on January 1, 2003, and any person selected to fill a vacancy in such office, shall continue to serve out their regular terms of office, which shall expire December 31, 2003, and upon the election and qualification of their respective successors. The successors to members of the board representing Education Districts 3, 4, and 5 shall be elected at the municipal general election in 2003, but as the members of the board from Districts 3, 4, and 5, respectively, as described in subsection (d) of Section 2.10 of this charter and shall reside in and be elected from Districts 3, 4, and 5 as so described.

(D) The members of the board of education representing Education Districts 1 and 2 and who are in office on January 1, 2003, and any person selected to fill a vacancy in such office, shall continue to serve out their regular terms of office, which expire December 31, 2005, and upon the election and qualification of their respective successors. On and after January 1, 2004, the members of the board of education representing Education Districts 1 and 2 shall be deemed to be serving from and representing Districts 1 and 2, respectively, as newly described in subsection (d) of Section 2.10 of this charter. The successors to members of the board representing Education Districts 1 and 2 shall be elected at the municipal general election in 2005 as members of the board from Districts 1 and 2, respectively, as described in subsection (d) of Section 2.10 of this charter and shall reside in and be elected from Districts 1 and 2 as so described.

(E) Members of the board first elected pursuant to subparagraphs (C) and (D) of this paragraph of this section, and all future successors to such officers having terms of office which are to expire, shall be elected at the municipal general election immediately preceding the expiration of such terms, shall take office the first day of January immediately following that election, and shall serve for terms of four years and until their respective successors are elected and qualified.

(F) (i) No person shall be a member of the board if that person is ineligible for such office pursuant to Code Section 20-2-51 or 45-2-1 of the O.C.G.A. or any other general law.

(ii) In order to be elected as a member of the board from an education district, a person must be a legal resident of that district and must receive the votes cast as required by general law for that office in that district only and not at large. Only electors who are residents of

that education district may vote for a member of the board for that district. At the time of qualifying for election as a member of the board from an education district, each candidate for such office shall specify the education district for which that person is a candidate. A person elected as a member of the board from an education district must continue to reside in that district during that person's term of office or that office shall thereupon become vacant.

(iii) All members of the board who are elected thereto shall be elected in accordance with Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election Code,' in nonpartisan elections as provided in Code Section 21-2-139 of the O.C.G.A.

(G) In the event of a vacancy occurring on or after January 1, 1993, in the membership of the board, for any reason other than expiration of term, that vacancy shall be filled as provided in Code Section 20-2-54.1 of the O.C.G.A.

(H) The board of education shall organize by electing a president or chairperson and a vice president or vice chairperson from their number. The superintendent of schools shall be elected by the board of education from outside the membership of the board, based upon that person's qualifications, and shall serve at the pleasure of the board.

(I) The superintendent of schools shall serve as the secretary and treasurer of the board. Members of the board shall, when approved by the board, receive a per diem of $50.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board on official business first authorized by a majority of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith. The accounts for such service and expenses shall be submitted for approval to the school superintendent. The compensation of members of the board shall be paid only from the local tax funds available to the board for educational purposes.

(J) In addition to these powers, the board of education shall possess all such other powers as are granted to boards of education under general law. Except as otherwise provided in this paragraph, the superintendent shall be subject to all general laws of this state relating to school superintendents.

(41) *Urban redevelopment.* To organize and operate an urban redevelopment program; and

(42) *Other powers.* To exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, or general welfare of the city and its inhab-itants; to exercise all implied powers necessary to carry into execution all powers granted in this charter as fully and completely as if such powers were fully stated in this charter; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under other laws of the State of Georgia; and no listing of particular powers in this charter shall be held to be exclusive of others, nor restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to municipalities under the constitution or applicable laws of the State of Georgia.

(Act No. 26, H.B. 152, 2-11-93; Ord. No. 2001-005, § 1, 12-10-2001; Act No. 157, H.B. 947, § 1, 5-30-2003)

Section 1.13. Exercise of powers.

All powers, functions, rights, privileges, and immunities of the city, its officers, agencies, or employees shall be carried into execution as provided by this charter. If this charter makes no provision, such shall be carried into execution as provided by ordinance or as provided by pertinent laws of the State of Georgia.

ARTICLE II. GOVERNMENT STRUCTURE, ELECTIONS, AND REMOVAL

Section 2.10. City council creation; composition; number; election.

(a) The legislative authority of the government of this city, except as otherwise specifically provided in this charter, shall be vested in a city council to be composed of a mayor and six councilmembers. The mayor and councilmembers shall be elected in the manner provided by this charter. All elected officers shall commence service on January 1 following their respective elections.

(b) The city council which existed on January 1, 2003, is continued in existence but on and after January 1, 2004, shall be constituted as provided in the remaining provisions of this section. The city council so continued and constituted shall continue to have the powers, duties, rights, and liabilities of that council as existed immediately prior to January 1, 2004.

(c) On and after January 1, 2004, the city council shall consist of the mayor and six councilmembers, with the mayor and councilmember who is mayor pro tempore being elected thereafter by electors residing anywhere within the city and the remaining five councilmembers being elected thereafter from electors residing only within their respective districts as described in subsection (d) of this section.

(d) (1) For purposes of electing five of six council members and all five members of the board of education of the city on and after the municipal general election in 2022, the city and its independent school district is divided into five districts. One council member and one member of the board of education shall be elected from each district. These five districts shall be defined as follows:

(i) District 1 shall be composed of the following Census Block Groups:

131570103002012

131570103002010

131570103002006

131570103002001

131570103002007

131570103004045

131570103004054

131570103004046

131570103004055

131570103004047

131570103003028

131570103003027

131570103003029

131570103003030

131570103003031

131570103004042

131570103003017

131570103004048

131570103004041

131570103004049

131570103002005

131570103002009

131570103002030

131570103002008

131570103003015

131570103003011

131570103003016

131570103003009

131570103004044

131570103004050

131570103004043

131570103003019

131570103003012

131570103003014

131570103003033

131570104004010

131570103003018

131570103003010

131570103003013

(ii) District 2 shall be composed of the following Census Block Groups:

131570104001003

131570104003031

131570104003029

131570104003037

131570104003028

131570104003016

131570104003015

131570104003027

131570104001023

131570104001024

131570104001010

131570104001009

131570104001005

131570104001007

131570104001006

131570104001002

131570104001001

131570103003023

131570104003025

131570104003033

131570104003058

131570104003059

131570104003060

131570103003026

131570104003032

131570104002019

131570104001022

131570104004030

131570104004031

131570104004009

131570104004014

131570104004008

131570104004003

131570104004041

131570104004068

131570104004032

131570104004035

131570104004033

131570104004063

131570104004040

131570104004064

131570104004037

131570104004036

131570104004034

131570104004038

131570104004039

131570104004007

131570104004002

131570104004004

131570104004001

131570104004006

131570104004005

131570104004000

131570104001004

(iii) District 3 shall be composed of the following Census Block Groups:

131570104004070

131570104002009

131570104002000

131570103002027

131570103002023

131570103002026

131570103002024

131570103002017

131570103002014

131570103002011

131570103002015

131570104004023

131570103002028

131570103002029

131570104004021

131570104004024

131570104004025

131570104004022

131570104004012

131570104004020

131570104004013

131570104004011

131570103002021

131570103002022

131570103002016

131570104002015

131570104002014

131570104002037

131570104004065

131570104004067

131570104002018

131570104003017

131570104002021

131570104002020

131570104004074

131570104004072

131570104004071

131570104002003

131570104002011

131570104002007

131570104002006

131570104002004

131570104004057

131570104004056

131570104004055

131570104002008

131570104004060

131570104002010

131570104004061

131570104004059

131570104004058

131570104004053

131570104004052

131570104004054

131570104004044

131570104004043

131570104004027

131570104004026

131570104004028

131570104004019

131570104004018

131570104004029

131570104004046

131570104004017

131570104004016

131570104004045

131570104004015

131570104004062

131570104004066

131570104004051

131570104004049

131570104004047

131570104004048

131570104004042

131570104004050

131570104004073

131570104004069

(iv) District 4 shall be composed of the following Census Block Groups:

131570103001060

131570103001058

131570103001076

131570102002046

131570103001130

131570103001105

131570103001109

131570104002030

131570104003023

131570104003077

131570104002029

131570104002025

131570104002035

131570104002028

131570104002024

131570103001118

131570103001119

131570103001145

131570103001121

131570103001113

131570103001100

131570103001098

131570103001087

131570103001088

131570103001096

131570103001095

131570103004002

131570103001017

131570103001009

131570103002020

131570103002031

131570103001140

131570103002032

131570103002019

131570103002018

131570103002004

131570103002013

131570104002002

131570104002001

131570103002025

131570103002000

131570103001079

131570103001061

131570103001062

131570103001065

131570103001072

131570103001071

131570103001070

131570103001064

131570103001066

131570103001041

131570103001042

131570103001015

131570103001007

131570103001039

131570103004035

131570103004053

131570103004001

131570103001067

131570103001069

131570103001068

131570103002003

131570103002002

131570102002061

131570102002051

131570102002049

131570103001135

131570103001123

131570103001125

131570103001134

131570103001115

131570103001084

131570103001097

131570103001092

131570103001090

131570103001085

131570103001129

131570103001132

131570103001133

131570103001128

131570103001020

131570103001045

131570103001038

131570103001006

131570103001052

131570102002041

131570103001030

131570103001028

131570103001053

131570103001049

131570103001051

131570103001047

131570103001037

131570103001043

131570103001044

131570103001021

(v) District 5 shall be composed of the following Census Block Groups:

131570103004060

131570103004029

131570103004003

131570103004030

131570103004004

131570103004011

131570103004052

131570103004051

131570103004056

131570103004033

131570103004031

131570103004038

131570103004032

131570103004039

131570103004028

131570103004040

131570103004027

131570103004026

131570103004034

131570103003001

131570103004022

131570103004024

131570103004007

131570103004015

131570103004019

131570103004020

131570103004016

131570103004058

131570103004025

131570103003002

131570103003008

(2) As used in this section, the term "Census Block Group" shall mean and describe the same geographical boundaries as are provided in the report of the Bureau of the Census for the United States Decennial Census of 2020 for the State of Georgia. The separate numeric designations in a district description shall mean and describe individual blocks within a block group as provided in the report of the Bureau of the Census for the United States Decennial Census of 2020 for the State of Georgia. Any part of the City of Commerce or its independent school district which is not included in any such district described in subsection (d)(1) above shall be included within that district contiguous to such part which contains the least population according to the United States Decennial Census of 2020 for the State of Georgia. Any part of the City of Commerce or its independent school district which is described in subsection (d)(1) above as being in a particular district shall nevertheless not be included within such district if such part is not contiguous to such district. Such noncontiguous part shall instead be included within that district contiguous to such part which contains the least population according to the United States Decennial Census of 2020 for the State of Georgia.

(3) Candidates for each of the five numbered city council and school districts shall be legal residents of that district, shall be elected by the electors residing only in that district, and shall continue to reside within that district during their terms of office.

(e) The mayor, the councilmembers representing Wards 3 and 4, and the councilmember representing at-large Post No. 1 in office on January 1, 2003, and any person selected to fill a vacancy in such office, shall continue to serve out their regular terms of office, which shall expire December 31, 2003, and upon the election and qualification of their respective successors. The successors to councilmembers representing Wards 3 and 4 shall be elected at the municipal general election in 2003, but as the councilmembers from Districts 3 and 4, respectively, as described in subsection (d) of this section and shall reside in and be elected from Districts 3 and 4 as so described. The successor to the mayor shall be elected at the municipal general election in 2003 from the city at large. The successor to the councilmember representing at-large Post No. 1 shall be elected at the municipal general election in 2003 but as councilmember from District 5 as described in subsection (d) of this section and shall reside in and be elected from District 5 as so described.

(f) The councilmembers representing Wards 1 and 2 and the councilmember representing at-large Post No. 2 in office on January 1, 2003, and any person selected to fill a vacancy in such office, shall continue to serve out their regular terms of office, which expire December 31, 2005, and upon the election and qualification of their respective successors. On and after January 1, 2004, the councilmembers representing Wards 1 and 2 shall be deemed to be elected from and representing District 1 and 2, respectively, as newly described in subsection (d) of this section. On and after January 1, 2004, the member of the city council representing at-large Post No. 2 shall become the mayor pro tempore. The successors to councilmembers representing Wards 1 and 2 shall be elected at the municipal general election in 2005 as councilmembers from Districts 1 and 2, respectively, as described in subsection (d) of this section and shall reside in and be elected from Districts 1 and 2 as so described. The successor to the councilmember representing at-large Post No. 2 shall be elected at the municipal general election in 2005 as the mayor pro tempore who shall reside in and be elected from the city at large and not from a specific election district.

(g) Successors to the mayor and councilmembers first elected pursuant to subsections (e) and (f) of this section, and all future successors to such officers having terms of office which are to expire, shall be elected at the municipal general election immediately preceding the expiration of such terms, shall take office the first day of January immediately following that election, and shall serve for terms of four years and until their respective successors are elected and qualified.

(Act No. 157, H.B. 947, § 2, 5-30-2003; Ord. No. 2011-002, 5-9-2011; Ord. No. 2022-001, 1-18-2022)

Section 2.11. City council terms and qualifications for office.

The members of the city council shall serve for terms of four years and until their respective successors are elected and qualified. No person shall be eligible to serve as mayor or councilmember unless he or she shall have been a resident of the city for 12 months immediately prior to the date of the election of mayor or members of the city council; and each shall continue to reside therein during his or her period of service and be registered and qualified to vote in municipal elections of this city.

(Act No. 157, H.B. 947, § 3, 5-30-2003)

Section 2.12. Vacancies in office.

(a) The office of mayor or councilmember shall become vacant upon the incumbent's death, resignation, forfeiture of office, or removal from office in any manner authorized by this charter or general law.

(b) A vacancy in the office of mayor or councilmember shall be filled for the remainder of the unexpired term, if any, as provided for in this charter.

Section 2.13. Compensation and expenses.

The mayor and councilmembers shall receive compensation and expenses for their services as provided by ordinance.

Section 2.14. Holding other office; voting when personally interested.

(a) Except as authorized by law, the mayor or any councilmember shall not hold any other city office or city employment during the term for which he was elected or during the period when he or she is seeking office following qualification.

(b) Neither the mayor nor any member of the city council shall vote upon or sign any ordinance, resolution, contract, or other matter in which he is personally interested.

Section 2.15. Inquiries and investigations.

The city council may make inquiries and investigations into the affairs of the city and the conduct of any department, office, or agency thereof and, for this purpose, may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the city council shall be punished as provided by ordinance.

Section 2.16. General power and authority.

Except as otherwise provided by this charter, the city council shall be vested with all the powers of government of this city as provided by article I of this charter.

Section 2.17. Eminent domain.

The city council is empowered to acquire, construct, operate, and maintain public ways, parks, public grounds, cemeteries, markets, market houses, public buildings, libraries, sewers, drains, sewage treatment, waterworks, electrical systems, gas systems, airports, hospitals, and charitable, educational, recreational, sport, curative, corrective, detentional, penal, and medical institutions, agencies, and facilities, and any other public improvements inside or outside the city and to regulate the use thereof and, for such purposes, property may be condemned under procedures established under general law applicable now or as provided in the future.

Section 2.18. Organization.

The mayor and city council shall hold an organizational meeting during the last week of December following each municipal election. In the event both the mayor and the mayor pro tem are serving terms of office which are to expire on December 31 of that election year, the meeting shall be called to order by the city clerk and the oath of the office shall be administered to the newly elected members as follows:

> I do solemnly (swear) (affirm) that I will faithfully perform the duties of (mayor) (councilmember) of this city and that I will support and defend the charter thereof as well as the Constitution and laws of the State of Georgia and of the United States of America.

Section 2.19. Meetings.

(a) The city council shall hold regular meetings at such times and places as prescribed by ordinance.

(b) Special meetings of the city council may be held on call of the mayor or three members of the city council. Notice of such special meeting shall be served on all other members personally, or by telephone personally, at least 48 hours in advance of the meeting. Such notice to councilmembers shall not be required if the mayor and all councilmembers are present when the special meeting is called. Such notice of any special meeting may be waived by a councilmember in writing before or after such a meeting and attendance at the meeting shall also constitute a waiver of notice on any business transacted in such councilmember's presence. Only the business stated in the call may be transacted at the special meeting.

(c) All meetings of the city council shall be public to the extent required by law and notice to the public of special meetings shall be made fully as is reasonably possible two days prior to such meeting.

Section 2.20. Procedures.

(a) The city council shall adopt its rules of procedure and order of business consistent with the provisions of this charter and shall provide for keeping a journal of its proceedings which shall be a public record. The rules of procedure adopted shall not expand or restrict any powers assigned to the mayor and councilmembers by this charter.

(b) All committees and committee chairmen and officers of the city council shall be appointed by the mayor and shall serve at the pleasure of the mayor. The mayor shall have the power to appoint new members to any committee at any time.

Section 2.21. Voting.

Four councilmembers shall constitute a quorum and shall be authorized to transact the business of the city council. Voting on the adoption of ordinances shall be by voice vote and the vote shall be recorded in the journal, but any member of the city council shall have the right to request a roll call vote and such vote shall be recorded in the journal. Except as otherwise provided in this charter, the affirmative vote of a majority of councilmembers present at an official meeting shall be required for the adoption of any ordinance, resolution, or motion.

Section 2.22. Ordinances.

(a) Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain a subject which is not expressed in its title. The enacting clause shall be "The Council of the City of Commerce hereby ordains…" and every ordinance shall so begin.

(b) An ordinance may be introduced by any councilmember and be read at a regular or special meeting of the city council. Ordinances shall be considered and adopted or rejected by the city council in accordance with the rules which it shall establish. Upon introduction of any ordinance, the clerk shall, as soon as possible,

distribute a copy to the mayor and to each councilmember and shall file a reasonable number of copies in the office of the clerk and at such other public places as the city council may designate.

Section 2.23. Effect of ordinances.

Acts of the city council which have the force and effect of law shall be enacted by ordinance. All other matters of business shall be considered in the form of a resolution.

Section 2.24. Codes.

(a) The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of subsection (b) of section 2.22 of this charter for distribution and filing of copies of the ordinance shall be construed to include copies of any code of technical regulations, as well as the adopting ordinance; and

(2) A copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the clerk pursuant to section 2.25 of this charter.

(b) Copies of any adopted code of technical regulations shall be made available by the clerk for distribution or for purchase at a reasonable price.

Section 2.25. Codification of ordinances.

(a) The clerk shall authenticate by his signature and record in full in a properly indexed book kept for that purpose all ordinances adopted by the council.

(b) The city shall provide for the preparation of a general codification of all the ordinances of the city having the force and effect of law. The general codification shall be adopted by the city council by ordinance and shall be published promptly together with all amendments thereto and shall contain such codes of technical regulations and other rules and regulations as the city council may specify. This compilation shall be known and cited officially as "The Code of the City of Commerce, Georgia." Copies of the code shall be furnished to all officers, departments, and agencies of the city and shall be made available for purchase by the public at a reasonable price as fixed by the city council.

(c) The city council shall cause each ordinance and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances and charter amendments shall be made available for purchase by the public at reasonable prices to be fixed by the city council. Following publication of the first code under this charter and at all times thereafter, the ordinances and charter amendments shall be printed in substantially the same style as the code then in effect and shall be suitable in form for incorporation within the code. The city council shall make such further arrangements as deemed desirable with reproduction and distribution of any changes in or additions to codes of technical regulations and other rules and regulations included in the code.

Section 2.26. City manager; appointment; qualifications; compensation.

The city council shall appoint a city manager for an indefinite term and shall fix his compensation. The manager shall be appointed solely on the basis of his executive and administrative qualifications.

Section 2.27. Suspension or removal of city manager.

The city manager is employed at will and may be summarily suspended or removed from office at any time by the city council.

(Ord. No. 2012-011, 9-10-12)

Section 2.28. Acting city manager.

By letter filed with the city clerk, the manager shall designate, subject to approval of the city council, a qualified city administrative officer to exercise the powers and perform the duties of manager during his temporary absence or disability. During such absence or disability, the city council may revoke such designation at any time and appoint another officer of the city to serve until the manager shall return or his disability shall cease.

ection 2.29. Powers and duties of the city manager.

The city manager shall be the chief administrative officer of the city. The city manager shall be responsible to the city council for the administration of all city affairs placed in his charge by or under this charter. The city manager shall have the following powers and duties:

(1) The city manager shall have the power to appoint, suspend, or remove the city clerk, department heads, and all other employees of the city, except the city attorney, city judge, and members of the boards and commissions, who shall be appointed by the mayor and council. In suspending and removing employees, the city manager shall have authority to do so without consent of the mayor and council but must keep the mayor and council advised of any actions deemed necessary. The city manager may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;

(2) The city manager shall direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by this charter or by law;

(3) The city manager shall attend all city council meetings and shall have the right to take part in discussion[s] but may not vote;

(4) The city manager shall see that all laws, provisions of this charter, and ordinances of the city council, subject to enforcement by the city manager or by officers subject to the city manager's direction and supervision, are faithfully executed;

(5) The city manager shall prepare and submit the annual operating budget and capital budget to the city council;

(6) The city manager shall submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

(7) The city manager shall make such other reports as the city council may require concerning the operation of city departments, offices, and agencies subject to his direction and supervision;

(8) The city manager shall keep the city council fully advised as to the financial condition and future needs of the city and make such recommendations to the city council concerning the affairs of the city as he deems desirable;

(9) The city manager shall perform other such duties as are specified in this charter or as may be required by the city council;

(10) The city manager shall supervise the performance of all contracts made by any person for work done for the City of Commerce and be the purchasing agent of materials and supplies for the city under such rules and regulations as may be imposed by the mayor and council; and

(11) The city manager shall perform such other duties as may be prescribed by this charter or required by ordinance or resolution of the mayor and council.

Section 2.30. Council interference with administration.

Except for the purpose of inquiries and investigations under section 2.15, or other inquiries and investigations initiated by action of the mayor and council, the city council or its members shall deal with city officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the city council nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 2.31. Election of mayor; forfeiture; compensation.

The mayor shall be elected and serve for a term of four years and until his successor is elected and qualified. He shall be a qualified elector of this city and shall have been a resident of the city for at least 12 months immediately preceding his election. He shall continue to reside in this city during the period of his service. He shall forfeit his office on the same grounds and under the same procedure as for councilmembers. The compensation of the mayor shall be established in the same manner as for councilmembers.

Section 2.32. Mayor pro tempore.

The mayor pro tempore shall be selected as provided in Section 2.10 of this charter and shall assume the duties and powers of the mayor during the mayor's disability or absence. Any such disability or absence shall be declared by a majority vote of the city council.

(Act No. 157, H.B. 947, § 4, 5-30-2003)

Section 2.33. Powers and duties of mayor.

The mayor shall:

(1) Preside at all meetings of the city council;

(2) Be the head of the city for the purpose of service of process and for ceremonial purposes and be the official spokesman for the city and the chief advocate of policy;

(3) Have the power to administer oaths and to take affidavits;

(4) Sign as a matter of course on behalf of the city all written and approved contracts, ordinances, and other instruments executed by the city which by law are required to be in writing;

(5) Vote on matters before the city council only in event of a tie and be counted toward a quorum as any other councilmember; and

(6) Fulfill such other executive and administrative duties as the city council shall by ordinance establish.

ARTICLE III. ORGANIZATION OF GOVERNMENT, GENERAL AUTHORITY, AND ORDINANCES

Section 3.10. Reserved.

Editor's note(s)—Ord. No. 2012-011, adopted Sept. 10, 2012, repealed § 3.10, which pertained to department heads and derived from the city's Charter as set forth in 1991 Ga. Laws, page 4042.

Section 3.11. Boards.

(a) The city council shall create by ordinance such boards, commissions, and authorities to fulfill any investigative, quasijudicial, or quasilegislative function the city council deems necessary and shall by ordinance establish the composition, period of existence, duties, and powers thereof.

(b) All members of boards, commissions, and authorities of the city shall be appointed by the city council for such terms of office and in such manner as shall be provided by ordinance, except where other appointing authority, terms of office, or manner of appointment is prescribed by this charter or by law.

(c) The city council, by ordinance, may provide for the compensation and reimbursement for actual and necessary expenses of the members of any board, commission, or authority.

(d) Any vacancy on a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed for the original appointment, except as otherwise provided by this charter or by law.

(e) Any member of a board, commission, or authority may be removed from office for cause by a majority vote of all of the members of the city council.

(f) Except as otherwise provided by this charter or by law, each board, commission, or authority of the city shall elect one of its members as chairman and one member as vice-chairman, and may elect as its secretary one of its members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish such bylaws, rules, and regulations, not inconsistent with this charter, an ordinance of the city, or law, as it deems appropriate and necessary for the fulfillment of its duties or the conduct of its affairs. Copies of such bylaws, rules, and regulations shall be filed with the clerk of the city.

Section 3.12. City attorney.

The city council shall appoint a city attorney, together with such assistant city attorneys as may be authorized, and shall provide for the payment of such attorney or attorneys for services rendered to the city. The city attorney shall be responsible for representing and defending the city in all litigation in which the city is a party, may be the prosecuting officer in the municipal court, shall attend the meetings of the council as directed, shall advise the city council, mayor, and other officers and employees of the city concerning legal aspects of the city's affairs, and shall perform such other duties as may be required of him by virtue of his position as city attorney.

Section 3.13. City clerk.

The city manager shall appoint a city clerk who shall not be a councilmember. The city clerk shall be custodian of the official city seal, maintain city council records required by this charter, and perform such other duties as may be required by the city manager. The office of city clerk may be a part-time or full-time position.

Section 3.14. City accountant.

The city council shall appoint a certified public accountant to perform the duties of an independent auditor.

Section 3.15. Position classification and pay plans.

The city manager shall be responsible for the preparation of a position classification and pay plan which shall be submitted to the city council for approval. Such plan may apply to all employees of the city and any of its agencies, departments, boards, commissions, or authorities. When a pay plan has been adopted, the city council shall not increase or decrease the salary range applicable to any position except by amendment of such pay plan. For purposes of this section, all elected and appointed city officials are not city employees.

Section 3.16. Personnel policies.

The city council shall adopt rules and regulations consistent with this charter concerning:

(1) The method of employee selection and probationary periods of employment;

(2) The administration of the position classification and pay plan, methods of promotion and application of service ratings thereto, and transfer of employees within the classification plan;

(3) Hours of work, vacation, sick leave, and other leaves of absence, overtime pay, and the order and manner in which layoffs shall be effected;

(4) Such dismissal hearings as due process may require; and

(5) Such other personnel notices as may be necessary to provide for adequate and systematic handling of personnel affairs.

Such personnel policies shall be directed and administered by the city manager as personnel director of all employees of the city.

ARTICLE IV. JUDICIAL BRANCH

Section 4.10. Municipal court.

There shall be a court to be known as the municipal court of the City of Commerce.

Section 4.11. Judges.

(a) The municipal court shall be presided over by a chief judge and such part-time, full-time, or stand-by judges as shall be provided by ordinance. The method of selection and terms of such judges shall be provided by ordinance.

(b) No person shall be qualified or eligible to serve as a judge on the municipal court unless he shall have attained the age of 25 years and shall have a high school diploma or its equivalent. The chief judge shall be nominated and appointed by the mayor and council and shall serve at the pleasure of the mayor and council. All other judges shall be nominated by the chief judge and appointed by the mayor and city council.

(c) Compensation of the judge or judges shall be fixed by ordinance.

(d) Judges may be removed for cause by a vote of a majority of all of the members of the city council; otherwise, judges shall serve terms of two years commencing and ending with the first meeting of the mayor and council held in January in even-numbered years.

(e) Before assuming office, each judge shall take an oath, given by the mayor or other officer authorized to administer oaths, that he will honestly and faithfully discharge the duties of his office to the best of his ability and without fear, favor, or partiality. The oath shall be entered upon the minutes of the city council journal required in section 2.20 of this charter.

Section 4.12. Convening of court.

The municipal court shall be convened at regular intervals as provided by ordinance.

Section 4.13. Powers.

(a) The municipal court shall try and punish violations of this charter, all city ordinances, and such other violations as provided by law.

(b) The municipal court shall have the authority to punish those in its presence for contempt, provided that such punishment shall not exceed a fine of $200.00 or ten days in jail.

(c) The municipal court may fix punishment for offenses within its jurisdiction not exceeding a fine of $1,000.00 or imprisonment for 180 days or both such fine and imprisonment or may fix punishment by fine, imprisonment, or alternative sentencing as now or hereafter provided by law. The maximum punishment for offenses committed under state law shall be those limits as established by general law.

(d) The municipal court shall have the authority to establish a schedule of fees to defray the cost of operation and shall be entitled to reimbursement of the actual cost of meals, transportation, and

caretaking of prisoners bound over to superior courts for violation of state law.

(e) The municipal court shall have authority to establish bail and recognizances to ensure the presence of those charged with violations before said court and shall have discretionary authority to accept cash or personal or real property as surety bond for the appearance of persons charged with violations. Whenever any person shall give bail for his appearance and shall fail to appear at the time fixed for trial, his bond shall be forfeited through procedures established by general law. In the event that cash or property is accepted in lieu of bond for security for the appearance of a defendant at trial, and if such defendant fails to appear at the time and place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited to the city, or the property so deposited shall have a lien against it for the value forfeited which lien shall be enforceable in the same manner and to the same extent as a lien for city property taxes.

(f) The municipal court shall have the same authority as superior courts to compel the production of evidence in the possession of any party; to enforce obedience to its orders, judgments, and sentences; and to administer such oaths as are necessary.

(g) The municipal court may compel the presence of all parties necessary to a proper disposal of each case by the issuance of summonses, subpoenas, and warrants which may be served as executed by any officer as authorized by this charter or by law.

(h) Each judge of the municipal court shall be authorized to issue warrants for the arrest of persons charged with offenses against any ordinance of the city, and each judge of the municipal court shall have the same authority as a magistrate of the state to issue warrants for offenses against state laws committed within the city.

(i) The municipal court is specifically vested with all the jurisdiction and powers throughout the geographic area of this city granted by law to municipal courts and particularly by such laws as authorize the abatement of nuisances and prosecution of traffic violations.

Section 4.14. Certiorari.

The right of certiorari from the decision and judgment of the municipal court shall exist in all criminal cases and ordinance violation cases, and such certiorari shall be obtained under the sanction of a judge of the superior court of Jackson County, under the laws of the State of Georgia regulating the granting and issuance of writs of certiorari.

Section 4.15. Rules.

With the approval of the city council, the judge shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the municipal court;

provided, however, that the city council may adopt in part or in toto the rules and regulations applicable to superior courts. The rules and regulations made or adopted shall be filed with the city clerk, shall be available for public inspection, and, upon request, shall be furnished to all defendants in municipal court proceedings at least 48 hours prior to said proceedings.

ARTICLE V. ELECTIONS

Section 5.10. Applicability of general law.

All elections shall be held and conducted in accordance with O.C.G.A. §§ 21-3-1—21-3-480, the "Georgia Municipal Election Code," as now or hereafter amended.

Section 5.11. Election of the city council and mayor.

There shall be a municipal general election biennially on the Tuesday next following the first Monday in November commencing in 1991.

(Act No. 157, H.B. 947, § 5, 5-30-2003)

Section 5.12. Nonpartisan elections.

Political parties shall not conduct primaries for city offices and all names of candidates for city offices shall be listed without party labels.

Section 5.13. Election by plurality.

The candidate receiving a plurality of the votes cast for any city office shall be elected.

Section 5.14. Special elections; vacancies.

In the event that the office of mayor or councilmember shall become vacant for any cause whatsoever, the city council or those remaining shall order a special election to fill the balance of the unexpired term of such official; provided, however, if such vacancy occurs within 12 months of the expiration of the term of that office, the city council or those members remaining shall appoint a successor for the remainder of the term. In all other respects, the special election shall be held and conducted in accordance with O.C.G.A. §§ 21-3-1—21-3-480, the "Georgia Municipal Election Code," as now or hereafter amended.

Section 5.15. Other provisions.

Except as otherwise provided by this charter, the city council shall, by ordinance, prescribe such rules and regulations it deems appropriate to fulfill any options and duties under O.C.G.A. §§ 21-3-1—21-3-480, the "Georgia Municipal Election Code."

Section 5.16. Removal of officers.

The mayor, councilmembers, or other appointed officers provided for in this charter shall be removed from office for any one or more of the following causes:

(1) By an order of the Superior Court of Jackson County following a hearing on a complaint seeking such removal brought by any resident of the City of Commerce;

(2) By recall pursuant to Georgia law; and

(3) Pursuant to the terms of general law.

ARTICLE VI. FINANCE

Section 6.10. Property tax.

The city council may assess, levy, and collect an ad valorem tax on all real and personal property within the corporate limits of the city that is subject to such taxation by the state and county. This tax is for the purpose of raising revenues to defray the costs of operating the city government, of providing governmental services, for the repayment of principal and interest on general obligations, and for any other public purpose as determined by the city council in its discretion.

Section 6.11. Millage.

The city council by ordinance shall establish a millage rate for the city property tax, a due date, and the time period within which these taxes must be paid. The city council by ordinance may provide for the payment of these taxes by installments or in one lump sum, as well as authorize the voluntary payment of taxes prior to the time when due.

Section 6.12. Occupation taxes and business license fees.

The city council by ordinance shall have the power to levy such occupation or business taxes as are not denied by law. Such taxes may be levied on both individuals and corporations who transact business in this city or who practice or offer to practice any profession or calling within the city to the extent such persons have a constitutionally sufficient nexus to this city to be so taxed. The city council may classify businesses, occupations, professions, or callings for the purpose of such taxation in any way which may be lawful and may compel the payment of such taxes as provided in section 6.18 of this charter.

Section 6.13. Licenses.

The city council by ordinance shall have the power to require any individual or corporation who transacts business in this city or who practices or offers to practice any profession or calling within the city to obtain a license or permit for such activity from the city and pay a reasonable fee for such license or permit where such activities are not now regulated by general law in such a way as to preclude city regulations. Such fees may reflect the total cost to the city of regulating the activity and, if unpaid, shall be collected as provided in section 6.18 of this charter. The city council by ordinance may establish reasonable requirements for obtaining or keeping such licenses as the public health, safety, and welfare necessitate.

Section 6.14. Franchises.

The city council shall have the power to grant franchises for the use of this city's streets and alleys for the purposes of railroads, street railways, telephone companies, electric companies, cable television companies, gas companies, transportation companies, and other similar organizations. The city council shall determine the duration, terms, whether the same shall be exclusive or nonexclusive, and the consideration for such franchises; provided, however, that no franchise shall be granted for a period in excess of 35 years and no franchise shall be granted unless the city receives just and adequate compensation therefor. The city council shall provide for the registration of all franchises with the city clerk in a registration book kept by him. The city council may provide by ordinance for the registration within a reasonable time of all franchises previously granted.

Section 6.15. Sewer fees.

The city council by ordinance shall have the power to assess and collect fees, charges, and tolls for sewers, sanitary and health services, or any other services provided or made available inside or outside the corporate limits of the city for the total cost to the city of providing or making available such services. If unpaid, such charges shall be collected as provided in section 6.18 of this charter.

Section 6.16. Roads.

The city council by ordinance shall have the power to assess and collect the costs of constructing, reconstructing, widening, or improving any public way, street, sidewalk, curbing, gutters, sewers, or other utility mains and appurtenances from the abutting property owners under such terms and conditions as are reasonable. If unpaid, such charges shall be collected as provided in section 6.18 of this charter.

Section 6.17. Other taxes.

This city shall be empowered to levy any other tax 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

Section 6.18. Collection of delinquent taxes.

The city council by ordinance may provide generally for the collection of delinquent taxes, fees, or other revenue due the city under sections 6.10 through 6.17 of this charter by whatever reasonable means as are not precluded by law. This shall include providing for the dates when the taxes or fees are due, late penalties or interest, issuance and execution of fi. fas., creation and priority of liens, making delinquent taxes and fees personal debts of the persons required to pay the taxes or fees imposed, revoking city licenses for failure to pay any city taxes or fees, and providing for the assignment or transfer of tax executions. The City of Commerce shall have the power to file its tax fi. fas. in the superior court, state court, or magistrate court of Jackson County and to utilize processes of garnishment to collect those taxes.

Section 6.19. Borrowing.

The city council shall have the power to issue bonds for the purpose of raising revenue to carry out any project, program, or venture authorized under this charter or the laws of the state. Such bonding authority shall be exercised in accordance with the laws governing bond issuance by municipalities in effect at the time said issue is undertaken.

Section 6.20. Revenue bonds.

Revenue bonds may be issued by the city council as state law now or hereafter provides. Such bonds are to be paid out of any revenue produced by the project, program, or venture for which they were issued.

Section 6.21. Loans.

The city may obtain short-term loans and must repay such loans not later than December 31 of each year, unless otherwise provided by law.

Section 6.22. Accounting and budgeting.

The city council shall set the fiscal year by ordinance. This fiscal year shall constitute the budget year and the year for financial accounting and reporting of each and every office, department, agency, and activity of the city government.

Section 6.23. Budget ordinance.

The city council shall provide an ordinance on the procedures and requirements for the preparation and execution of an annual operating budget, a capital improvement program, and a capital budget, including requirements as to the scope, content, and form of such budgets and programs.

Section 6.24. Operating budget.

On or before a date fixed by the city council but not later than 45 days prior to the beginning of each fiscal year, the city manager shall submit to the city council a proposed operating budget for the ensuing fiscal year. The budget shall be accompanied by a message from the mayor containing a statement of the general fiscal policies of the city, the important features of the budget, explanations of major changes recommended for the next fiscal year, a general summary of the budget, and such other comments and information as he may deem pertinent. The operating budget, the capital improvements budget, the budget message, and all supporting documents shall be filed in the office of the city clerk and shall be open to public inspection.

Section 6.25. Adoption.

(a) The city council may amend the operating budget proposed by the city manager, except that the budget as finally amended and adopted must provide for all expenditures required by state law or by other provisions of this charter and for all debt service requirements for the ensuing fiscal year. The total appropriations from any fund shall not exceed the estimated fund balance, reserves, and revenues.

(b) The city council shall adopt the final operating budget for the ensuing fiscal year not later than January 31 of each year. If the city council fails to adopt the budget by said date, the amounts appropriated for operation for the then current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly, until such time as the city council adopts a budget for the ensuing fiscal year. Adoption of the budget shall take the form of an appropriations ordinance setting out the estimated revenues in detail by sources and making appropriations according to fund and by organizational unit, purpose, or activity as set out in the budget preparation ordinance adopted pursuant to section 6.23 of this charter.

Section 6.26. Levy of taxes.

Following adoption of the operating budget, the city council shall levy by ordinance such taxes as are necessary. The taxes and tax rates set by such ordinance shall be such that reasonable estimates of revenues from such levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated for each of the several funds set forth in the annual operating budget for defraying the expense of the general government of this city.

Section 6.27. Changes in budget.

The city council by ordinance vote may make changes in the appropriations contained in the current operating budget at any regular meeting or special or emergency meeting called for such purposes.

Section 6.28. Capital improvements.

(a) On or before the date fixed by the city council, but not later than 45 days prior to the beginning of each fiscal year, the city manager shall submit to the city council a proposed capital improvements budget with his recommendations as to the means of financing the improvements proposed for the ensuing year. The city council shall have the power to accept, with or without amendments, or reject the proposed program and proposed means of financing. The city council shall not authorize an expenditure for the construction of any

building, structure, work, or improvement, unless the appropriations for such project are included in the capital improvements budget or the budget as amended by the mayor and council.

(b) The city council shall adopt by ordinance the final capital improvements budget for the ensuing fiscal year not later than January 31 of each year. No appropriations provided for in a prior capital improvements budget shall lapse until the purpose for which the appropriations were made shall have been accomplished or abandoned; provided, however, the city manager may submit amendments to the capital improvements budget at any time during the fiscal year, accompanied by his recommendations. Any such amendments to the capital improvements budget shall become effective only upon adoption by ordinance.

Section 6.29. Audits.

There shall be an annual independent audit of all city accounts, funds, and financial transactions by a certified public accountant selected by the city council. The audit shall be conducted according to generally accepted accounting principles. Any audit of any funds by the state or federal government may be accepted as satisfying the requirements of this charter. Copies of all audit reports shall be available at printing costs to the public.

Section 6.30. Procurement and property management.

No contract with the city shall be binding on the city unless:

(1) It is in writing; and

(2) It is made or authorized by the city council and such approval is entered in the city council journal of proceedings pursuant to section 2.20 of this charter.

Section 6.31. Purchasing.

The city council shall by ordinance prescribe procedures for a system of centralized purchasing for the city.

Section 6.32. Sale of property.

(a) The city council may sell and convey any real or personal property owned or held by the city for governmental or other purposes as now or hereafter provided by law.

(b) The city council may quitclaim any rights it may have in property not needed for public purposes upon request by the mayor and adoption of a resolution, both finding that the property is not needed for public or other purposes and that the interest of the city has no readily ascertainable monetary value.

(c) Whenever in opening, extending, or widening any street, avenue, alley, or public place of the city a small parcel or tract of land is cut off or separated by such work from a larger tract or boundary of land owned by the city, the city council may authorize the mayor to execute and deliver in the name of the city a deed conveying said cutoff or separated parcel or tract of land to an abutting or adjoining property owner or owners in exchange for rights-of-way of said street, avenue, alley, or public place when such exchange is deemed to be in the best interest of the city. All deeds and conveyances heretofore and hereafter so executed and delivered shall convey all title and interest the city has in such property, notwithstanding the fact that no public sale after advertisement was or is hereafter made.

ARTICLE VII. GENERAL PROVISIONS

Section 7.10. Bonds for officials.

The officers and employees of this city, both elected and appointed, shall execute such surety or fidelity bonds in such amounts and upon such terms and conditions as the city council shall from time to time require by ordinance or as may be provided by law.

Section 7.11. Rules and regulations.

All ordinances, resolutions, rules, and regulations now in force in the city not inconsistent with this charter are declared valid and of full effect and force until amended or repealed by the city council.

Section 7.12. Reserved.

Editor's note(s)—Act No. 157, H.B. 947, § 6, adopted May 30, 2003, deleted § 7.12 in its entirety. Former § 7.12 pertained to first election under this charter. For a complete history of former § 7.12 see the Charter Comparative Table.

Section 7.13. Existing personnel and officers.

Except as specifically provided otherwise by this charter, all personnel and officers of the city and their rights, privileges, and powers shall continue beyond the time this charter takes effect for a period of 365 days before or during which the existing city council shall pass a transition ordinance detailing the changes in personnel and appointed officers required or desired and arranging such titles, rights, privileges, and powers as may be required or desired to allow a reasonable transition.

Section 7.14. Charter language on other general matters.

Except as specifically provided otherwise by this charter, all rights, claims, actions, orders, contracts, and legal or administrative proceedings shall continue and any such ongoing work or cases shall be completed by such city agencies, personnel, or offices as may be provided by the city council.

Section 7.15. Definitions and construction.

(a) Section captions in this charter are informative only and shall not be considered as a part thereof.

(b) The word "shall" is mandatory and the word "may" is permissive.

(c) The singular shall include the plural, the masculine shall include the feminine, and vice versa.

Section 7.16. Severability.

In the event any section, subsection, sentence, clause, or phrase of this act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 7.17. Specific repealer.

An act incorporating the City of Commerce in the County of Jackson, approved August 17, 1909 (1909 Ga. Laws, page 655), is repealed in its entirety and all amendatory acts thereto are likewise repealed in their entirety.

Section 7.18. Effective date.

This act shall become effective on September 1, 1991.

CHARTER COMPARATIVE TABLE

This table shows the location of the Charter as set forth in Georgia Laws and any amendments thereto.

Year	Page	Section this Charter
1991	4042	1.10—7.18
1993 (Act No. 26, H.B. 152)		1.12(b)(40)
2003 (Act No. 157, H.B. 947)		1.2
		2.10
		2.11
		2.32
		5.11
		7.12

Ordinance Number	Date	Section this Charter
2001-005	12-10-2001	1.12(20.1)
2011-002	5- 9-2011	2.10(d)
2012-011	9-10-2012	2.27
	Dltd	3.10
2022-001	1-18-2022	2.10(d)(1), (2)

Chapter 2 ADMINISTRATION2

ARTICLE I. IN GENERAL

Section 2-1. Oaths.

All officers and employees required by this Code to take an oath shall, before entering upon the discharge of their respective duties, take and subscribe the following oath before an officer authorized by law to administer oaths:

> I _____ do solemnly swear that I will support the Constitution of the United States, the State Constitution, the Charter and Ordinances of the City of Commerce; and that I will, to the best of my ability, faithfully perform the duties of the office of _____ during my continuance therein, so help me God.

(Code 1987, § 3-103)

Charter reference(s)—Oath required for new city council members, § 2.18.

Section 2-2. Compensation.

(a) Each officer and employee of the city shall receive such compensation as may be provided from time to time by the city's classification and pay plan.

(b) The salaries of the mayor and councilmembers and all officers and employees elected by the city council shall be fixed by the preceding city council, and shall not be increased during their term of office.

(Code 1987, § 3-105)

Charter reference(s)—Compensation and expenses for mayor and councilmembers, § 2.13.

Section 2-3. City safety policy.

(a) The city council charges all members of the management of the city to make safety a part of their daily concern.

(b) This responsibility must also be accepted by everyone who has a part in the affairs of the city, no matter in what capacity he may function.

(c) This policy shall be observed in these vital areas by:

(1) Maintaining and developing applicable safety standards and work practices;

(2) Providing education and training, and practicing safe work habits;

(3) Conducting safety and fire inspections to identify potential hazards or operations;

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[2]Cross reference(s)—Elections, ch. 26; municipal court, ch. 42; taxation, ch. 70.

State law reference(s)—Supplemental powers of municipalities and counties enumerated, Ga. Const. art. 9, Section 2, par. 3; powers relating to administration of government generally, O.C.G.A. § 36-34-2; The Municipal Home Rule Act of 1965, O.C.G.A. § 36-35-1 et seq.

(4) Investigating all accidents to determine cause and the remedial action required to prevent occurrences;

(5) Ensuring that personal protective equipment is worn where applicable;

(6) Operating motor vehicles in a safe manner;

(7) Identifying potential health hazards and developing necessary protective measures; and

(8) Promoting safety publicity to maintain interest participation.

(Ord. No. 90-510, 5-14-90)

Section 2-4. Intent.

It is essential to the proper administration and operation of the City of Commerce that the members of its governing authority be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the governing authority. The governing authority finds that the public interest requires that they protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of the members of the governing authority in situations where a conflict may exist.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-5. Definitions. As used in this chapter, the term:

Complaint means a written sworn statement filed with the mayor or mayor pro tem containing specific allegations of misconduct by a member; provided, however, such allegations must be filed within six months of discovery of the alleged misconduct.

Interest means any direct pecuniary benefit, which is not a remote interest held by or accruing to a member of the governing authority as a result of a contract or transaction that is or may be the subject of an official act or action by or with the city. A member of the governing authority shall be deemed to have an interest in transactions involving:

(1) Any person in the member's immediate family;

(2) Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefits unless the member is receiving a benefit for goods or services in the normal course of business for which the member has paid a commercially reasonable rate;

(3) Any business in which the member is a director, officer, employee, agent, or shareholder, except as otherwise provided herein; or

(4) Any person of whom the member is a creditor, whether secured or unsecured.

Governing authority or *member of the governing authority* means the mayor or any councilmember of the city, the city manager, and any member appointed to any board or commission of the city.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-6. Prohibitions.

No member of the Governing Authority shall:

(1) By conduct give reasonable basis for the impression that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of official acts;

(2) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for him/herself or another person if it could reasonably be considered to influence the member in the discharge of official duties;

(3) Disclose or otherwise use confidential information acquired by virtue of his/her official position for his/her or another person's private gain;

(4) Use his/her official position to attempt to secure privileges that are not available to the general public;

(5) Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is adverse to and incompatible with the property discharge of official duties;

(6) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him/her by virtue of being a member of the governing authority;

(7) Use his/her position to request or require an employee to:

a. Do clerical work on behalf of the member's family, business, social, church or fraternal interest when such work is not furthering a city interest;

b. Perform any work outside the employee's normal course of municipal employment;

c. Purchase goods or services to be used for personal, business, or political purposes; and

d. Work for the member personally without paying the employee just compensation;

(8) Use government property of any kind for other than officially approved activities, nor shall he/she direct employees to use such property for any purposes other than those officially approved;

(9) Use his/her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to himself/herself or persons having an interest.

Prohibition (2) of this section shall not apply in the case of:

(1) An occasional non-pecuniary gift of insignificant value;

(2) An award publicly presented in recognition of public service;

(3) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such a loan or financial transaction;

(4) Campaign contributions made and reported in accordance with Georgia law.

Prohibition (5) of this section shall not apply to a member of the governing authority who is a licensed professional and appears on behalf of any applicant in such professional capacity so long as disclosures required by Section 2-5-4 are made to the board or commission chairperson 30 days prior to any action being taken, and the member is associated with the project at the time the initial application is filed.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-7. Disclosure of conflicts of interest.

An appointed member of the governing authority who has an interest that he/she has reason to believe may be affected by his/her official acts or actions or by the official acts or actions of the governing authority shall disclose the precise nature of such interest by written or verbal statement 30 days prior to the governing authority's taking official action on a matter affecting such interest and abstain from discussion and voting. An elected member of the governing authority or the city manager shall disclosure the nature of any interest he/she has at the time such matter is presented to mayor and council for discussion. Such written or verbal statements shall be recorded into the minutes of the meeting and thus become part of the public record. Following any

disclosure made pursuant to this section, the member shall refrain from all ex-parte communications with other members regarding the application in which he/she has an interest.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-8. Disqualification.

A member of the governing authority shall disqualify himself/herself from participating in any official act or action of the city which results in a pecuniary benefit to the member or a business or activity in which he/she has an interest, when such benefit is not available to the public at large.

(Ord. No. 2000-03.1, 4-10-00)

Section 2.9. Prohibited contracts.

(a) The City shall not enter into any contract involving services or property with a member of the Governing Authority or with a business in which a member of the Governing Authority has an interest

(b) this section shall not apply in the case of:

(1) The designation of a bank or trust company as a depository for city funds;

(2) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;

(3) Contracts entered into in accordance with the O.C.G.A., § 16-10-6.

(4) Contracts entered into under circumstances that constitute an emergency situation, provided that the mayor prepares a written record explaining the emergency.

(5) Contracts entered into with a member of the governing authority, or with a business in which a member of the governing authority has an interest, provided that such contract is the result of a competitive bid, disclosure of the nature of such member's interest is made prior to the time any bid is submitted, and a waiver of the prohibition contemplated by this section is issued by the city administrator following disclosure.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-10. Restrictions on contracts with former members of the governing authority.

The city shall not enter into any contract with any person or business represented by such person, who has been within the preceding 12-month period a member of the governing authority, unless the contract is awarded by a competitive bid or a committee selection process.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-11. Complaints.

Any person having a complaint against any member of the governing authority for an alleged ethics violation shall file in writing a verified complaint setting forth the particular facts and circumstances which constitute the alleged violation against the governing authority. The complaint shall be filed with the Mayor, or in the event the complaint regards the mayor, the mayor pro-tem shall appoint three members of council, who, along with the city attorney, shall constitute an investigating committee to determine whether the complaint sets forth significant facts and circumstances so as to warrant a hearing before the board of ethics. In the event the complaint does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded,

it shall be dismissed and the complainant notified immediately. In the event the complaint is found to state sufficient facts to warrant a hearing before the board of ethics, the board shall be appointed as provided herein.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-12. Board of ethics.

(a) Composition of the board of ethics:

(1) The board of ethics of the city shall be composed of five residents of the city to be appointed as provided in subsections (2) and (3) below. Each member of the board of ethics shall have been a resident of the city for at last one year immediately preceding the date of taking office and shall remain a resident of the city while serving as a member of the board of ethics. No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one-year period, any interest in any contract, transaction, or official action of the city.

(2) The mayor and councilmembers shall each designate two qualified citizens to provide a pool of 14 individuals who have consented to serve as a member of such board of ethics and who will be available for a period of two years to be called upon the serve in the event a board of ethics is appointed.

(3) The city manager shall maintain a listing of these 14 qualified citizens. Should the investigating committee determine a complaint warrants a hearing before the board of ethics, the mayor and council, at the first public meeting after such determination, shall draw names randomly from the listing of qualified citizens until the specified five members of the board of ethics have been appointed. Such board will elect one of its members to serve as chairman.

(4) The members of the board of ethics shall serve without compensation. The governing authority of the city shall provide meeting space for the board of ethics. Subject to budgetary procedures and requirements of the city, the city shall provide the board of ethics with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities.

(b) The constituted board of ethics shall have the following duties and powers:

(1) To establish procedures, rules and regulations governing its internal organization and conduct of its affairs;

(2) To hold a hearing within 60 days after the receipt of complaint. Failure to hold a hearing within the specified time shall result in dismissal of the complaint as to the transaction and shall prevent refiling if a complaint arises in the same incident for at least a period of six months;

(3) To prescribe forms, approved by the city attorney, for the disclosure required in this chapter and to make available to the public information disclosed as provided in this section;

(4) To receive and hear complaints of violations of the standards required by this chapter;

(5) To make such investigation and response to a complaint as it deems necessary to determine whether any person has violated any provisions of this chapter.

(6) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints;

(7) To report its findings to the governing authority for such action as the governing authority deems appropriate.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-13. Service of complaint; hearings and disposition of complaints.

The board of ethics as appointed herein set forth shall cause the complaint to be served on the member of the governing authority charged as soon as practicable. Service may be by personal service or by certified mail, return receipt requested. A hearing shall be held within 60 days after filing of the complaint. The board of ethics shall conduct the hearing in accordance with the procedures and regulations it establishes but, in all circumstances, the hearing shall include the taking of testimony and the cross-examination of witnesses. The decision of the board of ethics shall be rendered to mayor and council within five days after completion of the hearing.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-14. Penalty and member rights.

(a) Any member of the governing authority who knowingly violates any provision of the code of ethics provided in this article shall be subject to public reprimand or censure by the governing authority of the city.

(b) At any hearing held by the board of ethics, the member of the governing authority who is the subject of inquiry shall have the right to written notice of the allegations at least ten business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses and to present evidence and witnesses in opposition or in extenuation.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-15. Appeals.

(a) Any member of the governing authority or the complainant adversely affected by these findings of the board of ethics may obtain judicial review of such decision as provided in this section.

(b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the superior court of Jackson County within 30 days after the decision of the board of ethics. The filing of such application shall act as supersedes.

(Ord. No. 2000-03.1, 4-10-00)

Section 2-16. Acquisition of property interests with low fair market value.

The city may acquire property interests in land with an estimated value of less than $10,000.00, whether in fee simple or a lesser interest, for public purposes, without a written appraisal, provided that the owner of the property elects to negotiate for services and waives the right to an appraisal. The city manager or his designee may establish an estimated value of the property interest based on information currently from the Jackson County Tax Accessors office. The property owner shall sign a written waiver and consent to negotiate with the city for the acquisition of the property interests. If the property owner and the city do not reach an agreement on the acquisition of the property, a formal appraisal shall be obtained by the city upon which an offer for fair market value will then be based.

(Ord. No. 02300-003, § 1, 4-17-23)

Editor's note(s)—Ord. No. 02300-003, § 1, adopted April 17, 2023, set out provisions intended for use as § 2-12. For purposes of classification, and at the editor's discretion, these provisions have been included as § 2-16.

Section 2-17—2-25. Reserved.

ARTICLE II. CITY COUNCIL[3]

Section 2-26. Meetings.

(a) The city council shall hold its regular monthly meeting each month at 6:00 p.m. on the third Monday night of each month. All regular and special meetings shall be held in the City of Commerce, Georgia, at such location as determined by the mayor. The mayor shall cause notice of the location of such meetings to be given as required by applicable state law.

(b) It shall be the duty of each member of the city council to attend each meeting of the council, unless prevented from doing so by some unavoidable circumstance.

(Code 1987, § 3-201; Ord. No. 92-01, 1-13-92; Ord. No. 2013-002, 2-11-13)

Charter reference(s)—Meetings, § 2.19.

State law reference(s)—Meetings to be open to public, O.C.G.A. § 50-14-1; due notice requirements for other than regular meetings, O.C.G.A. § 50-14-1(d); excluded proceedings, O.C.G.A. § 50-14-3.

Section 2-27. Rules for the conduct of business.

Except as otherwise provided in this article, Robert's Rules of Order shall govern the conduct of council meetings.

(Code 1987, § 3-202)

Charter reference(s)—Procedures, § 2.20.

Section 2-28. Contract documents.

Unless otherwise provided in this Code, all contract documents shall, before presentation to the council, have been approved as to form and legality by the city attorney or his authorized representative and shall have been examined and approved for administration by the mayor or his authorized representative where there are substantive matters of administration involved. The head of the department under whose jurisdiction the administration of the subject matter of the instrument would devolve may submit to the mayor and council a memorandum containing any criticisms, modifications, objections, or other comments he may have concerning the instrument involved.

(Code 1987, § 3-202)

Section 2-29—2-50. Reserved.

[3]Charter reference(s)—Creation, composition, number and election of city council, § 2.10.

ARTICLE III. DEPARTMENTS[4]

Section 2-51. Departmental organization.

The administrative service of the city shall be comprised of the following departments and heads thereof:

(1) Water and sewer department, water and sewer superintendent.

(2) Gas department, gas superintendent.

(3) Fire department, fire chief.

(4) Police department, police chief.

(5) Electric department.

(6) Recreation department.

(7) Public works department.

(8) Administration and finance department.

(9) Garage.

(Code 1987, § 3-401)

Section 2-52. Reserve police program.

(a) A reserve police program (hereinafter referred to as the "program") is hereby created and established as an organization which shall be composed of retired commerce or active certified police officers (hereinafter "officers") who shall be appointed and sworn in as members thereof. To be eligible for membership, a retired or active officer must be Georgia POST certified and must be in good standing with the city and police department at retirement or current from full time police employment. Members may be volunteer workers or paid as part-time employees, the officers serve as a supplementary force, providing assistance to full time police officers in a variety of activities in accordance with the procedures outlined herein.

(b) The chief of the commerce police department, subject to the restrictions and limitations contained in this section, shall have complete authority and control over the Reserve Police Program members, and may delegate the exercise thereof, in whole or in part, to any of his or her subordinates. The chief of police shall establish by policy the rules and regulations governing this program and all its members. The chief of police shall be responsible for all assignments to be carried out hereunder.

(c) (1) In order to provide training for the members of the reserve police program, the chief of police is hereby authorized to conduct training that will achieve and maintain the requirements of the Georgia Peace Officer's Standards and Training (P.O.S.T.) certification for the officers.

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[4]Editor's note(s)—Regulations pertaining to the operation of the city's police department are compiled and published separately by the city as its police department policies and procedures manual. An official copy of that manual is on file in the city clerk's office.

Charter reference(s)—Department heads, § 3.10; personnel policies, § 3.16.

State law reference(s)—City's power to define, regulate and alter the powers, duties, qualifications, compensation and tenure of all municipal officers, agents and employees, O.C.G.A. § 36-34-2(2).

(2) The chief of police shall have the authority to require each member of the reserve program to satisfactorily complete all requirements of the training.

(3) Each reserve officer is expected to perform volunteer or paid part-time service to the city each year. The number of hours shall be determined by the chief of police.

(4) Each reserve officer will be subject to all police department policy and regulations and will be expected to maintain the same code of personal and professional conduct as required from the full time city police officers.

(5) Failure of a reserve officer to satisfactorily complete all requirements of P.O.S.T. shall result in suspension from the program.

(d) (1) Each officer, upon his or her retirement from full time employment with the city police department, shall be permitted to retain city equipment, as determined by the chief of police.

(2) The clothing and equipment to be used by reserve police officers shall be determined by the chief of police.

(3) The chief of police is hereby authorized to instruct employees benefits to withhold pension benefits of any retired officer who fails to return all city owned equipment to the police department, after being ordered by the chief of police to do so. All pension benefits withheld will be forwarded to the retired officer when he or she has complied with the return order.

(e) Each officer of the unit while working for the city shall be deemed either a volunteer or part-time employee and shall not be afforded workers' compensation benefits. Retired officers health, dental and pension benefits will not be affected by participation in the program.

(f) A reserve officer shall have the general powers of arrest afforded regular officers provided that he or she satisfactorily completed the training required by P.O.S.T. and the Commerce Police Department.

(g) (1) No officer of the reserve police program shall engage in any police work, whether as a volunteer or for pay, within the limits of the City of Commerce, either in or out of uniform, until he or she has filed an application for a work permit with the chief of the Commerce Police Department and said application has been approved.

(2) The application form for a permit to engage in any police work by the reserve program member shall be furnished by the department and shall include such information as the chief determines.

(3) Failure by a Commerce Reserve Police Program member to first obtain an approved work permit before engaging in a police related job shall be subject to disciplinary action up to and including dismissal from the Commerce Reserve Program.

(h) It shall be a violation, punishable by the law or by a fine not to exceed $1,000.00, for any person not a member of the Commerce Reserve Police Program:

(1) To wear, display or carry, as the case may be, any item issued by the City of Commerce to a reserve officer in order to perform law enforcement duties; or

(2) To represent, identify or hold himself or herself out, in any manner whatsoever, to be a member of the Commerce Reserve Police Program. The chief may terminate any reserve officer, with or without cause, without a hearing. a reserve officer may resign at any time by notification to the chief of police.

(Ord. No. 2003-002A, 7-14-03)

Section 2-53. Code enforcement officers.

The city manager may from time to time appoint code enforcement officers for the city. The code enforcement officers shall have authority to issue notices, citations or summons necessary for the enforcement of the provisions of this Code specifically including, but not limited to, the following sections of the City Code: sections 30-1, 30-2, 30-30, 30-31; sections 6.6, 9.7, 9.12 and 9.13 of the Zoning Ordinance for the City of Commerce, Georgia and chapters 4 and 5 of the Zoning Ordinance for the City of Commerce. Citations and summons issued by the code enforcement officers shall be returnable to the city court. The city manager may appoint a chief code enforcement officer and such assistants as the city manager may from time to time deem advisable.

(Ord. No. 2003-004A, 6-9-03)

Editor's note(s)—Ord. No. 2003-004A, adopted June 9, 2003, supplied provisions to be added to this Code as § 25-52. In order to maintain the numbering system of the Code and ease of amendment, at the discretion of the editor, these provisions have been designated as § 25-53 to read as set out herein.

Section 2-54—2-70. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS, AUTHORITIES[5]

Section 2-71. Housing authority.

There is hereby established a housing authority in and for the city which shall be vested with the powers, execute the duties, and comply with all the requirements and regulations prescribed by the Housing Authorities Law, O.C.G.A. § 8-3-1 et seq.

(Res. of 5-8-50; Code 1987, § 3-502)

Section 2-72. Industrial development authority.

(a) Pursuant to the authority contained in the Industrial Development Authorities Act of 1963 (1967 Ga. Laws, page 531) the city council declares a need for and there is hereby created an industrial development authority to be known as the city industrial development authority (hereinafter called "authority") which shall consist of a board of seven directors to be appointed by the city council, one direct from each ward and three directors at large. Directors of the authority must be residents of the city and, if appointed from a ward, residents of the ward from which they are appointed.

(b) The term of the office of directors of the authority shall be six years, except that the initial terms of the first seven directors appointed to the authority shall be:

(1) First ward, two years.

(2) Second ward, two years.

(3) Third ward, four years.

(4) Fourth ward, six years.

[5]Charter reference(s)—Boards, commissions and authorities, § 3.11.

(5) Directors at large:

a. One for two years.

b. One for four years.

c. One for six years.

(c) Any vacancy on the board shall be filled by appointment of the city council for the unexpired term. The council shall have the authority to remove any director of the authority for cause, on written charges, after a hearing. All directors shall serve without compensation but may be reimbursed for actual expenses incurred in the performance of their duties.

(d) The authority shall elect one of its appointive directors as chairman who shall serve for one year or until he is reelected or his successor is elected. A second director shall be elected as vice-chairman, and he shall serve for one year or until he is reelected or his successor is elected. The authority shall appoint a secretary who may be an officer or employee of the city or of the authority. The authority shall meet at least once each month at the call of the chairman and at such other times as the chairman, or a majority of the directors, or the city council may determine; shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The authority may appoint such employees and staff as it may deem necessary for its work, such appointments to be subject to the approval of the council. The authority is hereby vested with all of the powers, duties, and responsibilities set forth in the Industrial Development Authority Act of 1963 (1967 Ga. Laws, page 531).

(Code 1987, § 3-503)

Section 2-73. Planning commission.

(a) *Membership.* The planning commission shall consist of five members, who shall be residents of the city, appointed by the mayor and council. The term of the members shall be for staggered terms of four years, provided that two members shall initially be appointed for two years and three members shall initially be appointed for four years, and that thereafter each member shall be appointed for a four-year term. Any vacancy in membership shall be filled for the unexpired term by the council, which shall have the authority to remove any member for cause. All members shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties.

(b) *Organization; rules; meetings; records public.* The planning commission shall elect its chairman from among its members. The term of the chairman shall be one year, with eligibility for re-election. The planning commission shall appoint a secretary, who may be an officer or employee of the city. The planning commission shall make its own rules of procedure and determine its time of meetings. All meetings of the planning commission at which official action is taken shall be open to the public and all records of the planning commission shall be a public record.

(c) *Staff; services; expenditure limitations.* The planning commission, by and with the consent of the city council, may appoint such employees and staff as it may deem necessary for its work, and may contract with consultants for such services as it may require. However, no contract calling for the expenditure of any funds shall be entered into by the commission without the express consent of the city council. The planning commission shall in no event incur any liability that will exceed the amounts appropriated for that purpose by the city.

(d) *Powers and duties.* When the planning commission shall have organized and selected its officers and shall have adopted its rules of procedures, it shall have all the powers, duties and responsibilities set forth for the planning commission and for the board of zoning appeals as set forth in the zoning ordinance for the city, the City Charter, the City Code or as otherwise provided by law.

(Ord. No. 95-08, §§ 1—4, 8-14-95; Ord. No. 2006-019, 12-11-06)

Editor's note(s)—Ord. No. 95-08, adopted Aug. 14, 1995, has been codified herein at the direction of the city as replacing former § 2-73, relative to the county planning commission, which derived from the authority of the following resolution and ordinances:

(1)
A resolution by the county board of commissioners to establish a municipal-county planning commission, July 20, 1967.

(2)
An ordinance by the city council to establish a municipal-county planning commission, November 14, 1967.

(3)
An ordinance by the city council of Jefferson to establish a municipal-county planning commission, September 18, 1967.

(4)
An ordinance by the city council of Braselton to establish a municipal-county planning commission.

(5)
An ordinance by the city council of Hoschton to establish a municipal-county planning commission.

State law reference(s)—Coordinated and comprehensive planning by counties and municipalities, O.C.G.A. § 36-70-1 et seq.

Section 2-74. Minutes.

(a) This section shall govern the preparation and keeping of minutes for the meetings of the City Council and each Authority, Board, and Commission of the City.

(b) The Clerk of the City, or its designee, or the Secretary of the Authority, Board, or Commission, shall promptly record the minutes for each meeting. Each meeting shall also be audio recorded. The minutes shall specify the names of members present at the meeting, a description of each motion or other proposal made at the meeting, the name of the member who proposed each motion, the name of the member who seconded each motion, and a record of all votes (the name of each member voting for or against a proposal shall be recorded). Minutes for public hearings shall also include the name and address of any citizen speaking during the meeting as well as the content of their discussion. Minutes will otherwise be in summary form. More detailed information may be included in the minutes at the request of the Council, Authority, Board, or Commission.

(c) The members shall approve the minutes before they may be considered as an official record of the body. The minutes shall be open for public inspection once approved as official by the members but in no case later than immediately following the next regular meeting of the body. A copy of the minutes from the previous meeting shall be distributed to the members at least one business day before the following meeting. The minutes of the previous meeting shall be corrected, if necessary, and approved by the members at the beginning of each meeting. A majority vote is required for approval. Conflicts regarding the content of the minutes shall be decided by a majority vote. Upon being approved, the minutes shall be signed by the Chairman and attested to by the Clerk or Secretary and a copy of the minutes shall be forwarded to the City Council.

(Ord. No. 2024-0002, § I, 6-17-24)

Section 2-75—2-79. Reserved.

ARTICLE V. IDENTITY THEFT PREVENTION PROGRAM

Section 2-80. Short title.

This article shall be known as the identity theft prevention program.

(Ord. No. 2008-015, 11-10-08)

Section 2-81. Purpose.

The purpose of this article is to comply with 16 CFR § 681.2 in order to detect, prevent and mitigate identity theft by identifying and detecting identity theft red flags and by responding to such red flags in a manner that will prevent identity theft.

(Ord. No. 2008-015, 11-10-08)

Section 2-82. Definitions.

For purposes of this article, the following definitions apply[6]:

City means the City of Commerce.

Covered account means (i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and (ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefore.

Creditor means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit and includes utility companies and telecommunications companies.

Customer means a person that has a covered account with a creditor.

Identity theft means a fraud committed or attempted using identifying information of another person without authority.

Person means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

Personal identifying information means a person's credit card account information, debit card information, bank account information and drivers' license information and for a natural person includes their Social Security number, mother's birth name, and date of birth.

Red flag means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

Service provider means a person that provides a service directly to the city.

[6]Other than "city" and "personal identifying information", definitions provided in this section are based on the definitions provided in 16 CFR § 681.2.

(Ord. No. 2008-015, 11-10-08)

Section 2-83. Findings.

(1) The city is a creditor pursuant to 16 CFR § 681.2 due to its provision or maintenance of covered accounts for which payment is made in arrears.

(2) Covered accounts offered to customers for the provision of city services include water, sewer, garbage collection, and natural gas services.

(3) The processes of opening a new covered account, restoring an existing covered account, and making payments on such accounts have been identified as potential processes in which identity theft could occur.

(4) The city limits access to personal identifying information to those employees responsible for or otherwise involved in opening or restoring covered accounts or accepting payment for use of covered accounts. Information provided to such employees is entered directly into the city's computer system and is not otherwise recorded.

(5) The city determines that there is a low risk of identity theft occurring in the following ways:

a. Use by an applicant of another person's personal identifying information to establish a new covered account;

b. Use of a previous customer's personal identifying information by another person in an effort to have service restored in the previous customer's name;

c. Use of another person's credit card, bank account, or other method of payment by a customer to pay such customer's covered account or accounts; and

d. Use by a customer desiring to restore such customer's covered account of another person's credit card, bank account, or other method of payment.

(Ord. No. 2008-015, 11-10-08)

Section 2-84. Process of establishing a covered account.

(1) As a precondition to opening a covered account in the city, each applicant shall provide the city with personal identifying information of the customer, such as a valid state driver's licenses with photo or another acceptable identification, and Social Security card. Such information shall be entered directly into the city's computer system and hard copy of the information is retained in a locked file cabinet.

(2) Each account shall be assigned an account number, which shall be unique to that account.

(Ord. No. 2008-015, 11-10-08)

Section 2-85. Access to covered account information.

(1) Access to customer accounts shall be password protected and shall be limited to authorized city personnel.

(2) Such password(s) shall be changed by the director of information technology on a regular basis, shall be at least eight characters in length and shall contain letters, numbers and symbols.

(3) Any unauthorized access to or other breach of customer accounts is to be reported immediately to the city manager and the password changed immediately.

(4) Personal identifying information included in customer accounts is considered confidential and any request or demand for such information shall be immediately forwarded to the city manager and the city attorney.

(Ord. No. 2008-015, 11-10-08)

Section 2-86. Credit card payments.

(1) In the event that credit card payments that are made over the Internet are processed through a third party service provider, such third party service provider shall certify that it has an adequate identity theft prevention program in place that is applicable to such payments.

(2) All credit card payments made over the telephone or the city's website shall be entered directly into the customer's account information in the computer data base.

(3) Account statements and receipts for covered accounts shall include only the last four digits of the credit or debit card or the bank account used for payment of the covered account.

(Ord. No. 2008-015, 11-10-08)

Section 2-87. Sources and types of red flags.

All employees responsible for or involved in the process of opening a covered account, restoring a covered account or accepting payment for a covered account shall check for red flags as indicators of possible identity theft and such red flags may include:

(1) *Suspicious documents.* Examples of suspicious documents include:

a. Documents provided for identification that appear to be altered or forged;

b. Identification on which the photograph or physical description is inconsistent with the appearance of the applicant or customer;

c. Identification on which the information is inconsistent with information provided by the applicant or customer;

d. Identification on which the information is inconsistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check; or

e. An application that appears to have been altered or forged, or appears to have been destroyed and reassembled.

(2) *Suspicious personal identification, such as suspicious address change.* Examples of suspicious identifying information include:

a. Personal identifying information that is inconsistent with external information sources used by the financial institution or creditor. For example:

i. The address does not match any address in the consumer report; or

ii. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

b. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer, such as a lack of correlation between the SSN range and date of birth.

c. Personal identifying information or a phone number or address, is associated with known fraudulent applications or activities as indicated by internal or third-party sources used by the financial institution or creditor.

d. Other information provided, such as fictitious mailing address, mail drop addresses, jail addresses, invalid phone numbers, pager numbers or answering services, is associated with fraudulent activity.

e. The SSN provided is the same as that submitted by other applicants or customers.

f. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of applicants or customers.

g. The applicant or customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

h. Personal identifying information is not consistent with personal identifying information that is on file with the financial institution or creditor.

i. The applicant or customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

(3) Unusual use of or suspicious activity relating to a covered account. Examples of suspicious activity include:

a. Shortly following the notice of a change of address for an account, the city receives a request for the addition of authorized users on the account.

b. The city is notified that the customer is not receiving paper account statements.

c. The city is notified of unauthorized charges or transactions in connection with a customer's account.

d. The city is notified by a customer, law enforcement or another person that it has opened a fraudulent account for a person engaged in identity theft.

(4) Notice from customers, law enforcement, victims or other reliable sources regarding possible identity theft or phishing relating to covered accounts.

(Ord. No. 2008-015, 11-10-08)

Section 2-88. Prevention and mitigation of identity theft.

(1) In the event that any city employee responsible for or involved in restoring an existing covered account or accepting payment for a covered account becomes aware of red flags indicating possible identity theft with respect to existing covered accounts, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to city manager. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the city manager, who may in his or her discretion determine that no further action is necessary. If the mayor in his or her discretion determines that further action is necessary, a city employee shall perform one or more of the following responses, as determined to be appropriate by the city manager:

a. Contact the customer;

b. Take other appropriate action to prevent or mitigate identity theft.

(2) In the event that any city employee responsible for or involved in opening a new covered account becomes aware of red flags indicating possible identity theft with respect to an application for a new account, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to city manager. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the city manager, who may in his or her discretion determine that no further action is necessary. If the city manager in his or her discretion determines that further action is necessary, a city employee shall perform one or more of the following responses, as determined to be appropriate by city manager:

a. Request additional identifying information from the applicant;

b. Deny the application for the new account;

c. Notify law enforcement of possible identity theft; or

d. Take other appropriate action to prevent or mitigate identity theft.

(Ord. No. 2008-015, 11-10-08)

Section 2-89. Updating the program.

The city council shall annually review and, as deemed necessary by the council, update the identity theft prevention program along with any relevant red flags in order to reflect changes in risks to customers or to the safety and soundness of the city and its covered accounts from identity theft. In so doing, the city council shall consider the following factors and exercise its discretion in amending the program:

(1) The city's experiences with identity theft;

(2) Updates in methods of identity theft;

(3) Updates in customary methods used to detect, prevent, and mitigate identity theft;

(4) Updates in the types of accounts that the city offers or maintains; and

(5) Updates in service provider arrangements.

(Ord. No. 2008-015, 11-10-08)

Section 2-90. Program administration.

The city finance director is responsible for oversight of the program and for program implementation. The city manager is responsible for reviewing reports prepared by staff regarding compliance with red flag requirements and with recommending material changes to the program, as necessary in the opinion of the city manager to address changing identity theft risks and to identify new or discontinued types of covered accounts. Any recommended material changes to the program shall be submitted to the city council for consideration by the council.

(1) The finance director will report to the city manager at least annually, on compliance with the red flag requirements. The report will address material matters related to the program and evaluate issues such as:

a. The effectiveness of the policies and procedures of city in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;

b. Service provider arrangements;

c. Significant incidents involving identity theft and management's response; and

d. Recommendations for material changes to the program.

(2) The finance director is responsible for providing training to all employees responsible for or involved in opening a new covered account, restoring an existing covered account or accepting payment for a covered account with respect to the implementation and requirements of the identity theft prevention program. The finance director shall exercise his or her discretion in determining the amount and substance of training necessary.

(Ord. No. 2008-015, 11-10-08)

Section 2-91. Outside service providers.

In the event that the city engages a service provider to perform an activity in connection with one or more covered accounts the finance director shall exercise his or her discretion in reviewing such arrangements in order to ensure, to the best of his or her ability, that the service provider's activities are conducted in accordance with policies and procedures, agreed upon by contract, that are designed to detect any red flags that may arise in the performance of the service provider's activities and take appropriate steps to prevent or mitigate identity theft.

(Ord. No. 2008-015, 11-10-08)

Section 2-92—2-99. Reserved.

ARTICLE VI. INDEMNITY AND DEFENSE OF ELECTED AND APPOINTED OFFICIALS

Section 2-100. Definitions.

For purposes of this article, the following terms are defined as follows:

Appointed official shall mean any employee of a department of the city; any member of a board, commission or authority of the city; and any contractor working in an official capacity for a department of the city, including but not limited to city manager, acting city manager, city accountant, city attorney, city engineer, and city planner.

Elected official means the mayor and all of the individual members of the city council.

(Ord. No. 2024-004, § I, 12-16-24)

Section 2-101. Indemnity and defense.

(a) To the extent allowed by laws of the State of Georgia, the city shall defend, indemnify and hold harmless any elected official and any appointed official from any and all claims, actions, damages, liability, and assertions of liability, in any civil proceeding brought against any elected official or any appointed official either in his or her official or individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made in the scope and course of his or her employment or duty as an official of the city.

(b) Upon approval of the city council, and subject to the provisions of O.C.G.A. § 45-9-21, the city may, but shall not be required to, defend, indemnify and hold harmless any elected official or any appointed official from any and all claims, actions, damages, liability, and assertions of liability, in any criminal proceeding brought against any elected official or any appointed official either in his or her official or in her individual capacity, or

both, on account of any act done or omission made, or any act allegedly done or omission allegedly made in the scope and course of her employment or duty as an official of city.

(c) The indemnification provision related to civil claims and, upon approval of the council, indemnification related to criminal prosecution, includes all reasonable attorney's fees and costs of defense of any such claim.

(d) Defense may be provided by the city, at the council's sole and absolute discretion, by using its own counsel, by employing other outside counsel, or by purchasing insurance which requires that the insurer provide the defense.

(e) The city may settle any claim to prevent a civil action from being brought against any elected official or any appointed official or to settle a civil action which has been brought against said official(s), and it shall pay any civil judgment entered against any elected official or appointed official when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made in the scope and course of his or her employment or duty as an official of the city. However, the city shall not be required to pay any claim made or civil judgment entered against any elected official or appointed official if the council finds that said official acted or failed to act because of actual fraud, corruption, intentional wrongdoing, intentional criminal activity, or actual malice.

(f) At the discretion of the council, the city may purchase insurance coverage for payment of any such claim or judgment.

(g) The city shall only pay all or part of a claim made or civil judgment entered against any elected official or any appointed official if prompt notice of the claim or litigation is given to the city manager and city council after the time that the elected official or appointed official first learns that the claim has been asserted.

(Ord. No. 2024-004, § I, 12-16-24)

Section 2-102. Applicability.

This article shall apply in excess of any applicable insurance policy or in cases where insurance is determined not to provide coverage. This article shall apply to any judgment, verdict, award, or settlement that is not final (an award, judgment or verdict shall be considered final if an opportunity to appeal has been abandoned or the appeal has been exhausted and no further review is available) as of the time this article is adopted by city council.

(Ord. No. 2024-004, § I, 12-16-24)

Section 2-103. Right and authority of city council to direct the purchase of insurance.

The city council shall have the option and discretion to direct the city manager to purchase such insurance as is deemed appropriate and sound, to provide a defense and/or indemnity for the city and its officials. Nothing in this policy shall be deemed to constitute insurance or a waiver of the city's sovereign immunity under Georgia law.

(Ord. No. 2024-004, § I, 12-16-24)

Section 2-104. Resolution of disputes over application of this article.

If a question arises about the application of this article to a particular set of facts or circumstances, such question shall be resolved solely by the city council, acting pursuant to law and its rules, within the discretion and wisdom of the legislative body. Any appeal of such decision may be had to the Superior Court of Jackson County of the State of Georgia by writ of certiorari.

(Ord. No. 2024-004, § I, 12-16-24)

Chapter 3 ADVERTISING[7]

ARTICLE I. IN GENERAL

Section 3-1—3-50. Reserved.

ARTICLE II. RESERVED[8]

Section 3-51—3-80. Reserved.

ARTICLE III. RESERVED[9]

Section 3-81—3-92. Reserved.

[7]Cross reference(s)—Certain advertising regarding alcoholic beverages prohibited, § 6-100; loudspeakers and amplifiers for advertising, § 30-102(3); noises to attract attention, § 30-102(17); advertisements, pamphlets and handbills, § 46-31 et seq.; signs and banners for parades, assemblies, etc., § 62-97.

[8]Editor's note(s)—At the instruction of the city planning and zoning department, Art. II, §§ 3-51—3-80, has been deleted from this Code of Ordinances. The information pertaining to signs can be found in Ch. 4.10 of the Zoning Code.

[9]Editor's note(s)—At the city's instruction, Art. III—Signs has been deleted from this Code of Ordinances. Information pertaining to Signs can be located in the city's Zoning Code. The Commerce City Zoning Code may now be found here: https://library.municode.com/index.aspx?clientId=13596

Chapter 6 ALCOHOLIC BEVERAGES[10]

ARTICLE I. IN GENERAL

Section 6-1. 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:

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Auditorium means a permanent building or hall used for concerts, speakers, plays and similar activities and that has a seating capacity in excess of 50 seats.

Beer or *malt beverage* means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including, ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.

Brewery means an establishment where malt beverages are manufactured or brewed.

Brewery, micro means any brewery designed to accommodate the processing of fewer than 5,000 barrels of beer or ale within any consecutive 12-month period.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form. The term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Church means a permanent building specifically constructed for the purpose of persons regularly assembling for religious worship.

City means the City of Commerce, Georgia.

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[10]Editor's note(s)—Ch. 6, §§ 6-1—6-105, was deleted as being superseded by Ord. No. 2005-008, adopted Dec. 12, 2005, which supplied provisions for a new Ch. 6, §§ 6-1—6-42, to read as set out herein. Former Ch. 6, §§ 6-1—6-105, pertained to similar subject matter. For a complete history of Ch. 6, §§ 6-1—6-105, see the Code Comparative Table.

Cross reference(s)—Businesses, ch. 18; offenses and miscellaneous provisions, ch. 46; taxation, ch. 70; traffic and vehicles, ch. 74; zoning, app. A.

State law reference(s)—Use of proceeds of alcoholic beverage tax for prevention, education and treatment, Ga. Const. art. 3, Section 9, par. 6; Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.; furnishing to, purchase of or possession by persons under 21 years of age; use of false identification, O.C.G.A. § 3-3-23; public drunkenness, O.C.G.A. § 16-11-41; furnishing alcoholic beverages to persons under 21 years of age; jurisdiction of municipal courts, O.C.G.A. § 36-32-10; treatment of alcoholics and intoxicated persons, O.C.G.A. § 37-8-1 et seq.; driving under the influence of alcohol or drugs, O.C.G.A. § 40-6-391.

Distilled spirits means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

Election day means that period of time beginning with the opening of the polls and ending with closing of the polls for any election.

Government center means a building owned or leased by and operated by the state or the county or the city and which contains a lobby or atrium area or other room which is used for group functions. If a license is issued for premises within a government center, a government official or employee shall be the named licensee.

Hotel means a building or other structure kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which 50 or more rooms are used for the sleeping accommodations of these guests, and having one or more public dining rooms, with an adequate and sanitary kitchen and seating capacity of at least 50 where meals are regularly served to those guests, the sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out in this definition for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of being granted franchises for the operation of a lounge, restaurant or nightclub in their premises and the holder of the franchise shall be included in the definition of hotel.

License means the authorization granted by the city to engage in the sale or distribution of alcoholic beverages.

Licensee means a person holding any class of license issued under this chapter.

Lounge means a separate room connected with a part of, and adjacent to, a restaurant or located in a hotel with all booths, stools, and tables being unobstructed and open to view. A lounge that is operated on a different floor in the premises or in a separate building or that is not connected to or adjacent to a restaurant shall be considered a separate establishment and an additional license fee shall be paid therefore.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than six percent alcohol by volume and including ale, porter, brow, stout, lager, small and strong beers. The term does not include sake, known as Japanese rice wine.

Manufacturer means any maker, producer or bottler of an alcoholic beverage. The term also means:

(1) For distilled spirits, any person engaged in distilling, rectifying or blending any distilled spirits;

(2) For malt beverages, any brewer; and

(3) For wine, any vintner.

Minor means a person less than 21 years of age.

Package means a bottle, can, keg, barrel, or other original consumer container.

Package store means an establishment engaged in the retail sale of packaged alcoholic beverages, such as ale, beer and wine for consumption off the premises and at which on-premises consumption is specifically prohibited, as distinct from a bar, restaurant or similar establishment which is licensed for the sale of alcoholic beverages of any type by the drink and/or for consumption on the premises.

Person means an individual or individuals, a partnership or partnerships, a limited partnership, a limited liability company or companies, a corporation or corporations an association or associations or any combination thereof.

Premises means the definite closed or partitioned-in locality, whether room, shop, tasting room, or building, wherein alcoholic beverages are sold or consumed. Premises also includes any area or patio immediately adjacent to the main licensed facility and located on property owned or leased by such licensee.

Private club means a corporation chartered, organized and existing under the laws of the state, exempt from federal income taxes pursuant to Ordinance 501 (c) of the Internal Revenue Code, as amended, actively and continuously in operation within the city as a nonprofit corporation for at least one year immediately prior to the application for a license under this chapter and during which time such corporation shall have had continuously not less than 50 members whose names, current addresses, and current telephone numbers shall have been kept listed on the club premises, which members shall have regularly paid quarterly, semiannual or annual dues. The nonprofit corporation shall be operated exclusively for pleasure, recreation, and other non-profitable purposes, and no part of the net earnings of the corporation shall inure to the benefit of any member, director, or officer. No member, director, officer, agent, or employee of the club shall be paid or directly or indirectly receive, in the form of salary or other compensation, any profits from the sale of distilled spirits by or to the club or its members or guests, except such salary as may be fixed by its members at any annual meeting or by its governing board out of the general revenue of the club.

Restaurant means any public place kept, used maintained, advertised and held out to the public as a place where meals are actually and regularly prepared and served, at least one meal per day for six days each calendar week, with the exception of holidays, vacations, and periods of redecorating, without sleeping accommodations, the place being provided with adequate and sanitary kitchen, adequate sanitary restroom facilities, dining room equipment and seating capacity of at least 50 people, having employed therein a sufficient number and kind of employee to prepare, cook and serve suitable food for its guests. The preparations and serving of these meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises constituting not more than 50 percent of the gross sales thereof in any one quarter of a calendar year.

Resort facility means a golf course or golf course facility and restaurant operated in connection therewith, and shall include any hotel and restaurant facility operated in connection with such golf course facility.

Retailer or retail dealer means any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale.

Sale means selling or offering for sale any alcoholic beverages to any member of the public.

School means only such state, county, city, church, or other schools as teach the subjects commonly taught in the common schools of this state and does not include private schools where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Sports facility means premises operated exclusively for the purpose of providing professional sporting events, such as professional football, auto racing, or similar athletic or amusement events for attendance by the public.

Tasting room means an outlet operated by a winery for the promotion of a winery's wine by providing complimentary samples of such wine to the public and for the retail sale of such wine.

Wholesaler or wholesale dealer means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

Wine or vinous liquors means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

Winery means a manufacturer of wine.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2019-005, § 1, 5-20-19)

Section 6-2. Compliance assumed for existing licenses.

All licensees holding a valid license for the manufacture or sale of alcoholic beverages issued by the city at the time of the enactment of this chapter shall be deemed to have complied with all requirements as to application and issuance of licenses under this chapter. The licensees shall, however, meet all other requirements as to regulation and control as set forth in this chapter. The city hereby ratifies its issuance of existing licenses pursuant to this chapter.

(Ord. No. 2005-008, 12-12-05)

Section 6-3. Days, hours of sale.

It is hereby ordained that Section 6-3 of the Code of Ordinance of the City of Commerce, Georgia is hereby amended to providing that the retail sales of alcoholic beverages for consumption on the premises shall be allowed between the hours of 11:00 a.m. and 12:00 midnight on Sundays.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2012-012, 11-12-12; Ord. No. 2020-011, 6-15-20; Ord. No. 2022-003, § I, 2-21-22)

Section 6-4. Sale on election days.

Pursuant to O.C.G.A. § 3-3-20(b), the sale of alcoholic beverages on election days is authorized.

(Ord. No. 2005-008, 12-12-05)

Section 6-5. Duration of license.

All licenses issued pursuant to this chapter shall be valid only so long as the licensee is actively engaged in such business and if the licensee ceases to be actively engaged in such business his license shall be invalid and the licensee shall immediately notify the city clerk and return his license to the city clerk.

(Ord. No. 2005-008, 12-12-05)

Section 6-6. Term of license.

No license for retail sales of alcoholic beverages for consumption on the premises shall be issued for less than a calendar year period. In case of the revocation or surrender of the license before expiration of the calendar year period, the holder shall not be entitled to receive any refund of any fees or taxes whatsoever.

(Ord. No. 2005-008, 12-12-05)

Section 6-7. Expiration of license.

All licenses issued under the provisions of this chapter shall expire at 12:00 midnight on December 31 of the year in which issued.

(Ord. No. 2005-008, 12-12-05)

Section 6-8. Inspection of establishments.

Sworn officers of the city police department shall have the authority to inspect establishments licensed under this chapter during the hours in which the premises are open for business. These inspections shall be made for the purpose of verifying compliance with this chapter.

(Ord. No. 2005-008, 12-12-05)

Section 6-9. License required.

(a) All applications for alcoholic beverage licenses shall, at a minimum, include the following: The name of the business, the address of the business, telephone contact information for the business, the applicant's Social Security number or tax identification number. The application shall contain all such other information as provided by this chapter. The information contained on the application shall be used only for the purposes of determining whether to grant the application or to assist the city in enforcement of the requirements of this chapter or in the collection of any delinquent occupational taxes, license fees, or other taxes or charges imposed by this chapter or by other provisions of this Code. If the applicant refuses to supply the required information, the city clerk, or his designee, may reject the application.

(b) No tasting room shall be operated except under a license granted by the city council and mayor as provided in this chapter. The applicant for a tasting room license must be a winery and must meet all legal requirements contained in this chapter for the sale of wine by the package and for the sale of wine by the drink. A tasting room license shall allow the license holder to sell wine by the package and to give or sell wine samples at one location. No other license shall be required for the tasting room location pursuant to this chapter. Tasting room licensees are subject to all laws, rules and regulations of the state and are subject to license revocation for violation thereof.

(c) No licensee shall be authorized to operate a business until the license has been paid for in cash or the equivalent and the license delivered to the licensee by the city clerk.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2007-001, 1-8-07)

Section 6-10. Separate licenses required for package sales and sales for on-premises consumption.

Licensees for the sale of alcoholic beverages by the drink shall not permit the sale of alcoholic beverages by the bottle or package. Provided however that such licensees shall have the right to sell wines, champagnes or malt beverages to the public by the bottle or package for consumption on the premises without the issuance of a separate retail license therefore.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2007-001, 1-8-07))

Section 6-11. Transfer of license.

No alcoholic beverage license shall be transferred from one person to another during the year in which the license was obtained, except in the case of death of the person holding a license, in which event his executor or administrator may continue to operate under the license for six months from the date of his qualification.

(Ord. No. 2005-008, 12-12-05)

Section 6-12. Operation by new owner under prior license.

Upon the sale of any licensed business hereunder, the new owner may operate the business under the old license under this chapter, but in no event for longer than 60 days or until his application is granted or refused under this chapter, whichever shall first occur.

(Ord. No. 2005-008, 12-12-05)

Section 6-13. License categories.

(a) The alcoholic beverage licenses which may be issued under this chapter are:

(1) Wholesaler.

(2) Retail package sales of wine and/or malt beverages.

(3) Retail sales of wine and malt beverages and distilled spirits for consumption on the premises.

(4) Manufacturer.

(5) Wine importer.

(6) Caterer.

(7) Special event.

(8) Retail sales of distilled spirits by the package.

(b) A separate application is required for each license category enumerated in subsection (a) of this section; the city council will act upon each application separately.

(c) A license for retail sales of alcoholic beverages for consumption on the premises shall be issued only to applicants that meet the requirements of this chapter for a hotel, restaurant, private club or other specific activities outlined in this chapter.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2014-050, 12-15-14; Ord. No. 2022-003, § II, 2-21-22)

Section 6-13.1. Maximum number of distilled spirits package retail licenses permitted.

(a) After issuance of the initial licenses as provided in section 6-44 and subject to subsections (b) through (e) below, the city will not accept any additional applications for the retail sale of distilled spirits by the package, and no additional licenses for the retail sale of distilled spirits by the package shall be issued.

(b) If at any time and for whatever reason, the number of active licenses for the retail sale of distilled spirits by the package falls below two, then the city shall accept applications for and issue such additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to two. If applications are accepted, they shall be processed, reviewed and approved or denied in the order in which they are filed with the city clerk.

(c) The provisions of subsection (b) notwithstanding, additional licenses may be issued once the population of the city exceeds 10,000. In this regard, one additional license shall be issued for each 5,000-person increase in population over 10,000. In determining population, the city shall utilize the most recent population figures published by the U.S. Census Bureau.

(d) If the total number of permitted licenses has increased pursuant to subsection (c) above, and if at any time and for whatever reason thereafter, the number of active licenses for the retail sale of distilled spirits by the package falls below the number then permitted, then the city shall accept applications for and issue such

additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to the total number then permitted.

(e) The provisions of subsections (a) through (d) above and the provisions of section 6-11 notwithstanding, any person who has been issued a license for the retail sale of distilled spirits by the package may transfer such a license in conjunction with the sale of the license holder's business, provided that the transferee meets all of the requirements for new license applicants as set forth in this chapter.

(f) All holders of licenses for the retail sale of distilled spirits must, within 90 days after the issuance of the license, or within 90 days after completion of the building as allowed by section 6-44(c), open for business the establishment referred to in the license and begin the sale of the product or products authorized by the license. Failure to open the establishment and begin the sale of products within the 90-day period shall serve as automatic forfeiture and cancellation of the license and no refund of license fees shall be made to the license holder.

(Ord. No. 2022-003, § III, 2-21-22)

Section 6-14. Fees.

License fees for each category of license specified in section 6-13 shall be as follows:

Distilled spirits consumption on premises within the Central Business District$1,500.00

Distilled spirits consumption on premises outside the Central Business District4,000.00

Distilled spirits wholesale2,000.00

Distilled spirits manufacturer4,000.00

Distilled spirits by the package retail5,000.00

Malt beverage package retail500.00

Malt beverage consumption on premises500.00

Malt beverage wholesale250.00

Malt beverage manufacturer750.00

Wine package retail500.00

Wine consumption on premises300.00

Wine wholesale250.00

Wine manufacturer250.00

Wine Importer200.00

The event permit fee for alcoholic beverage caterers for beer and wine shall be $30.00 and for distilled spirits it shall be $50.00.

Special event permit fee is $50.00 per day up to a maximum of $2,000.00.

Notwithstanding the fees scheduled hereinabove, it is provided that the licensed fee for a distilled spirits consumption on the premises during the first year of operation of a licensed business shall be reduced to $2,000.00. It is further provided that any licensee obtaining an alcoholic beverage license prior to July 1 of the year shall pay the full annual license fee due, but any licensee obtaining an alcoholic beverage license on or after July 1 of the year shall pay only one-half the required annual fee.

(Ord. No. 2005-008, 12-12-052; Ord. No. 2011-003, 12-12-11; Ord. No. 2012-004, 2-13-12; Ord. No. 2022-003, § IV, 2-21-22)

Section 6-15. Catered function.

(a) An authorized catered function is an event at which an alcoholic beverage caterer sells and or serves alcoholic beverages and a meal is served.

(b) No single person, group, association, corporation, company, partnership, limited liability corporation or partnership, or any other entity shall hold more than six authorized catered functions per year.

(c) No authorized catered function shall take place on the premises of any alcoholic beverage licensee who is not also the caterer for the function.

(Ord. No. 2005-008, 12-12-05)

Section 6-16. Application procedure.

(a) *General.* The applicant for a license under this chapter shall make a written application under oath on the form as provided by the city clerk or his/her designated representative. Such application shall be a public record and open to public inspection by any citizen at a reasonable time and place.

(b) *Application fee.* The applicant shall, upon turning in his complete application to the city clerk or his/her designated representative, at the same time provide a payment of $50.00 as a non-refundable application fee in addition to the applicable license fees.

(c) *Corporation-stockholders.* All applicants who are corporations having ten or less stockholders shall list the names and addresses of all stockholders and the percentage of stock owned by each on the application form. If a named stockholder therein is another corporation, the same information shall be given for the stockholding corporation. If during the life of the license the identity of the stockholders or their percentages of ownership should change, that information shall be sent to the city clerk or his/her designated representative for processing.

(d) *Corporate agents.* All corporate applicants, without regard to the number of stockholders, shall list the names and addresses of the officers of the corporation. In addition thereto, they shall name an agent and address of the agent, who shall be the individual who does in fact have regular, managerial and supervisory authority over the business conducted on the licensed premises. In addition, the manager shall be an agent for service for the corporation in addition to all other methods allowed for serving a corporation by the laws of Georgia. Any person who has been an agent/manager of a corporation whose license has been revoked is ineligible to act as an agent/manager for any corporate licensee thereafter.

(e) *Documents.* The following documents shall be attached to each application:

(1) Evidence of ownership of the premises where the proposed business is to be located or a copy of the lease if the applicant is leasing the building or premises.

(2) A certified or cashier's check payable to the city for the proper amount of the license fee. If the license is refused, the amount of the check shall be refunded to the applicant.

(3) All applications shall include a certificate from a registered surveyor showing a scale drawing of the location of the proposed or existing premises and the distance, measured in a straight line, from the proposed or existing front entrance of the proposed or existing premises to the front entrance of the buildings of the nearest alcoholic treatment centers or churches or to the nearest property line of the real property of a school building, educational building, school grounds, college campus or residentially

zoned property or certifying that the proposed location complies with the location requirements of this chapter and state law.

(4) A copy of an advertisement to be run in the Commerce News one time stating the purpose of the application, the location of the business and the owner or owners of the business together with an affidavit by the applicant stating the date when this advertisement has or will run in such newspaper.

(f) *Investigation.* The city clerk of his/her designated representative shall submit the application within two business days after filing to the police department. The police department shall make an arrest and conviction investigation concerning any applicants hereunder if individuals and the officers and the designated agent or manager if applicant is a corporation and shall submit the results of the investigation to the city clerk within seven days of submission.

(g) *Offenses.* Any person making a false statement in any application for a license, or statement in connection with renewal thereof, shall be guilty of an offense and punished as provided by state law relating to false swearing, and further, a license, if previously granted or renewed, may be revoked for the violation. It shall be an offense for any person to give other than the true and correct legal name of the intended licensee, and a conviction for a violation thereof shall be punished as provided by section 1-12 of this Code, and in his discretion, the judge of the municipal court may revoke, suspend or probate any license for such violation and the administrative hearing officer may revoke, suspend, or probate any license for such violation.

(h) *Duration/renewal.* All licenses are issued only on a calendar year basis and shall come up for renewal each year following issuance. Each licensee shall make a written application for renewal by November 15 of each year following issuance. Each licensee shall swear to the truthfulness of such information that is the same as the prior application and shall set forth facts which are different from the prior year's application. All applications for renewal of licenses for the ensuring year shall be treated as applications for new licenses, except that they need not be advertised nor, except to the extent of any change in ownership or interested parties, an investigation conducted by the chief of police. All such reapplications shall be acted on by the city council at the December meeting of the city council unless notice is given to any applicant pursuant to section 6-20. All licensees under this chapter shall expire on December 31 of each calendar year in which it was issued.

All fees shall be tendered with the application.

(i) *Penalty for filing renewal application and license fee payment after November 15.* There shall be a penalty fee charged for filing alcoholic beverage renewal application and license fee payment after November 15 of $50.00. If an alcoholic beverage license renewal application and license fee has not been filed with the city clerk's office by December 15, the license shall be declared to be abandoned and any re-licensing shall require a new application.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2022-003, § V, 2-21-22)

Section 6-17. Qualifications for applicants.

All applicants for licenses under this chapter must attach to their application evidence of their good character. No license, whether original or renewal, shall be issued to any person organized for pecuniary gain where any individual having an interest either as owner, partner, general or limited, stockholder, directly or indirectly, beneficial or absolute, or the spouse of any individual with any interest as set forth in this section, 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 of the United States or any municipal ordinance except traffic violations. A conviction or a plea of nolo contendere to the offense of driving an automobile while under the influence of intoxicating liquor or drugs shall not be considered an excepted traffic violation.

(Ord. No. 2005-008, 12-12-05)

Section 6-18. Investigation of application.

(a) Applicants, by filing for a license agree to furnish the date, information and records required by this article and also agree to submit under oath to interrogation by the city manager, city attorney, and/or city council as to any facts considered pertinent to the application. Applicants, by filing the application, also agree to produce for oral interrogation by the city manager, city attorney, and/or city council, any person requested by the city manager and/or city council, as being important in the ascertainment of the facts relative to the granting of the license. Failure to furnish this date, information and records or failure to produce these persons within 30 days from the date of the request by the city shall automatically serve to dismiss with prejudice the application of the applicant failing to furnish the date, information and records or failing to produce these persons.

All applications for new licenses, and applications for renewals thereof, shall be investigated by the designee of the city clerk, and no new or renewal license shall be acted upon by the city council or issued by the city clerk until the designee has indicated in writing that in his opinion no violation exists upon the facts as stated and ascertained by such investigation as to any ordinance or law in effect as of the date of the rendering of the opinion.

(b) All applicants for new licenses or for transfers of locations shall be passed upon by the city council and its action shall be taken within 60 days from the date of the filing of the application.

(c) Any change in any relationship declared in section 6-15, pertaining to the application's contents, which requires investigation by the city manager or city council prior to the issuance of a renewal license, shall be passed upon by the city council within 60 days from the date of filing of the changes.

(Ord. No. 2005-008, 12-12-05)

Section 6-19. Public hearing on application.

All applications for licenses shall be acted upon by the city council after a public hearing and advertisement in at least one issue of the legal organ of the city, which notice shall contain a particular description of the location of the proposed business and shall give the name of the applicant; and, if a partnership, the names of all the partners, both general and limited; and, if a corporation, the names of the officers and board of directors. The advertisement referred to in this section shall be a type not smaller than ten point capital and lower case and shall be at least a one-inch, two-column advertisement.

(Ord. No. 2005-008, 12-12-05)

Section 6-20. Issuance of license.

(a) All licenses must be obtained and license fees and occupational taxes must be paid at the time the completed application is submitted to the city clerk. If the application is denied by the mayor and council, all application fees will be returned to the applicant except the administrative fee.

(b) When a license has been approved by the mayor and council, a license will be issued to the applicant.

(Ord. No. 2005-008, 12-12-05)

Section 6-21. Consideration of, action on application by council.

(a) Upon completion of the application for a license under the provisions of this article, the printing of the notice in the newspaper, and the completion of the character investigation by the chief of police, the city clerk shall

submit the application to the city council at its next regularly scheduled meeting and shall notify the applicant of the date, time and place of the meeting.

(b) Before the city council shall deny any application or reapplication for a license, or shall revoke or suspend any existing license, the applicant or licensee, as the case may be, shall be given notice in writing by the mayor or the city clerk to show cause before the city council at a time and place specified and being not less than three days nor more than ten days from the date of service of the notice, why the application or reapplication for license should not be denied, or why the license should not be revoked or suspended, as the case may be. This notice shall set forth any objections to the application or reapplication and any possible grounds on which a denial of the application or reapplication or a revocation or a suspension of the license may be based as well as the names of any witnesses to be called in support of the denial or revocation. At the appointed time and place the applicant or licensee shall have an opportunity to present evidence, call witnesses, cross-examine witnesses, make statements and otherwise show cause, if any exists, why the application or reapplication should not be denied or why the license should not be revoked or suspended.

(c) After this hearing and based upon the evidence presented at this hearing, the city council shall take such action as it, in its judgment and discretion, shall deem warranted under the facts, the hearing herein provided for need not be at a regular meeting of the city council but may be at such time and place as shall be fixed in the above described notice.

(d) The city council shall have the right to suspend any malt beverage or wine license pending the hearing provided for in this section where in the judgment of the city council, such action is necessary to protect the public health, safety, welfare or morals of the community. Any such suspension shall not exceed ten days unless the licensee requests a continuance of the hearing before the city council ion which case the suspension will stay in effect until the time of the hearing.

(Ord. No. 2005-008, 12-12-05)

Section 6-22. Excise tax.

(a) *Per liter of distilled spirits.* There is hereby levied an excise tax computed at the rate of $0.22 per liter which shall be paid to the city on all distilled spirits sold for consumption on the premises in the city. Such tax shall be paid to the governing authority by the wholesale distributor on all distilled spirits sold to licensees for the sale of distilled spirits for consumption on the premises in the city as follows:

(1) Each wholesaler selling, shipping, or in any way delivering distilled spirits to any licensee hereunder, shall collect the excise tax at the time of delivery and shall remit the same together with a summary of all deliveries to each licensee on or before the 20th day of the month following. The $0.22 per liter shall be prorated so that all containers of distilled spirits shall be taxed on the basis of $0.22 per liter.

(2) It shall be unlawful and a violation of this section for any wholesaler to sell, ship, or deliver in any manner any distilled spirits to a retail consumption dealer without collecting said tax.

(3) It shall be unlawful and a violation of this Section for any retail consumption dealer to possess, own, hold, store, display, or sell any distilled spirits on which such tax has not been paid.

(4) Each wholesaler shall be paid three percent of the amount of taxes collected as reimbursement for collection of said tax.

(b) *Distilled spirits by the drink.* In addition to the excise tax required in subsection (a) of this section, a tax on the retail purchase of distilled spirits by the drink is hereby levied, to be collected at the rates and in the manner hereinafter set forth.

(1) Every purchaser of distilled spirits by the drink shall be liable for a tax thereon at the rate of three percent of the retail price or charge for such drink. Such taxes shall be collected by the licensee

hereunder and such licensee shall remit the same to the city on or before the 20th day of the succeeding month along with a summary of the licensee's gross sales derived from the sale of distilled spirits by the drink excluding malt beverages and wine. Gross sales shall include all credit sales and shall be reported and taxes collected thereon shall be submitted to the city to the same extent as required for cash sales.

(2) Each licensee shall be allowed a deduction equal to that rate authorized from deduction from state tax under the "Georgia Retailer's and Consumer's Sales and Use Tax Act', as now written or hereafter amended (O.C.G.A. § 48-8-1, et seq.); provided that said tax is not delinquent at the time of payment. It shall be the duty of every licensee required to make a report and pay any tax levied hereunder to keep such records, receipts, invoices and such other books or accounts may be necessary to determine the amount of tax due; and it shall be the duty of every licensee to keep and preserve such records for a period of three years, which shall be made available on request for inspection by any duly authorized representative of the city.

(c) *Malt beverages.* There is hereby levied and imposed upon each wholesaler selling malt beverages within the city an excise tax as follows:

(1) Where malt beverages, commonly know as tap or draft beer, are sold in or from a barrel or bulk container, a tax of $6.00 on each container sold containing not more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons.

(2) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, a tax of $0.05 per 12 ounce and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(d) *Wines.*

(1) It is hereby levied and imposed upon each wholesale dealer selling wine within the city an excise tax in the amount of $0.22 per liter and a proportionate tax at like rates on all fractional parts of a liter.

(2) Wines produced by a wine manufacturer and sold at retail by the package or for consumption on the premises of the manufacturer shall have levied thereon an excise tax in the amount of $0.22 per liter and a proportionate tax at like rates on all fractional parts of a liter.

(3) Notwithstanding anything to the contrary which may be contained herein:

a. No excise tax is levied hereunder upon bulk wine purchased by a wine manufacturer and used for blending purposes or blended, bottled, and sold other than at retail by a wine manufacturer.

b. No excise tax is levied hereunder on wine produced by a wine manufacturer and sold by such manufacturer to persons outside of the city for resale or consumption outside of the city.

c. No excise tax is levied hereunder on wine produced by a wine manufacturer and distributed by such manufacturer as samples in its tasting room on the premises of the winery.

(4) There is hereby levied and imposed upon each wholesale dealer selling wine within the city to a facility other than a winery facility, including a tasting room, or a resort facility, an excise tax in the amount of $0.22 per liter and a proportionate tax at like rates on all fractional parts of a liter.

(e) *Collection of excise tax.* Unless otherwise authorized by the mayor and city council, alcoholic beverage excise taxes shall be calculated monthly, and such taxes for a particular month shall be paid to the city on or before the 20th day after the close of such month.

(f) *Reporting excise tax.* A summary of sales by each licensee shall be furnished to the city clerk with each monthly payment. Any misstatement or concealment of fact in reports or applications shall be grounds for revocation of the license issued and shall make the applicant or licensee liable to prosecution for perjury under the laws of the State of Georgia.

(g) *Distilled spirits by the package.* It is hereby levied and imposed upon each retail dealer selling distilled spirits by the package within the city an excise tax in the amount of $0.22 per liter and a proportionate tax at like rates on all fractional parts of a liter.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2022-003, § VI, 2-21-22)

Section 6-23. Determination if no return made.

(a) If any licensee fails to make a return for the tax levied under this chapter, the city clerk shall make an estimate of the amount of the gross receipts of the licensee or as the case may be, of the amount of the total sales in this city which are subject to the tax. The estimate shall be made for the period in respect to which the licensee failed to make the return and shall be based upon any information which is or may come into the possession of the city clerk. Upon the basis of this estimate, the city clerk shall compute and determine the amount required to be paid, adding to the sum thus determined a penalty equal to 15 percent thereof. One or more determinations may be made for one or for more than one period.

(b) In making a determination, the city clerk may offset overpayments from a period or penalties against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this subsection.

(c) The amount of the determination, exclusive of penalties, shall bear interest at the rate set forth in Code section 70-29 from the 20th day after the close of the monthly period for which the amount or any portion thereof have been returned, until the date of payment.

(d) If the failure of any person to file a return is due to fraud or an intent to evade this subsection or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 15 percent penalty.

(e) Promptly after making a determination, the city clerk shall give to the person, written notice to be served personally or by mail.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2016-004, 7-18-16)

Section 6-24. Collection of unpaid tax.

(a) At any time within three years after any tax levied under this chapter or any amount of tax required to be collected under this chapter becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the city may bring an action in the courts of this state or any other state or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(b) If any licensee liable for any amount under this chapter sells or terminates the business, the licensee's successor or assigns shall withhold sufficient funds from the purchase price to cover such amount until the former owner produces a receipt from the city clerk, showing that the amount has been paid or a certificate stating that no amount is due.

(c) If the purchaser of a business fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the city clerk shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the amount that must be paid as condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the

operator sells the business or at the time that the determination against the operator becomes final, whichever event shall last occur.

(Ord. No. 2005-008, 12-12-05)

Section 6-25. Sale or delivery to unlicensed premises; removal of beverages from premises.

(a) It shall be unlawful for any licensee to make deliveries of any alcoholic beverage by the package beyond the boundaries of the premises covered by the license.

(b) It shall be unlawful for any licensee to make or allow the sale or delivery of any alcoholic beverage by the drink to any area other than the premises covered by the license, private, meeting, and dining rooms located on the premises covered by the license and the designated rooms of any guest in a hotel or motel covered by the license except as authorized by Article II of this Chapter.

(c) It shall also be unlawful for any person to remove any alcoholic beverage served by the drink to any area beyond the licensed premises except as authorized by Article II of this Chapter.

(Ord. No. 2005-008, 12-12-05)

Section 6-26. Misrepresentation of alcoholic beverage contents.

It shall be unlawful for licensee or their agents to add to the contents of a bottle or to refill empty bottles or in any other manner to misrepresent the quantity, quality, or brand name of any alcoholic beverage.

(Ord. No. 2005-008, 12-12-05)

Section 6-27. Temporary for special events with sales.

(a) Upon the filing of an application and payment of a filing fee of $25.00 and a permit fee of $50.00 per day, up to a maximum of $2,000.00, and after investigation by the city clerk, the city manager may issue a permit to an individual or organization for the sale of alcoholic beverages for consumption on the premises only during a special event under the following conditions:

(1) The applicant must already hold an annual license for the sale of alcoholic beverages for on-premises consumption.

(2) The permit will allow sale of alcoholic beverages beyond the premises described in the annual license only in the area specifically described in the application and only during the special event named.

(3) Food must be served during any period of time that alcoholic beverages are served.

(4) The application for such permit must have been filed with the city clerk at least 30 days prior to the date of the special event.

(5) The hours of any such special event must be between 9:00 a.m. and 11:00 p.m. Monday through Saturday.

(6) Each special event shall last a maximum of seven consecutive days, and the hours of any such special event must be between 6:00 a.m. to 11:59 p.m. on Monday through Saturday and 12:30 p.m. through 11:30 p.m. on Sunday.

(7) If the event is to be held in a park, the applicant must first obtain the approval of the city council. The city manager shall, from time to time, designate boundaries to establish zones for special events within

the city and the applicant must obtain approval for the specific zone in which the special event shall occur.

(b) The application for a special event permit shall set forth the following information.

(1) The name, address and telephone number of the person seeking to conduct the special event;

(2) If the special event is proposed to be conducted for, on behalf of or by an organization, the name, address, and telephone number of the headquarters of the organization, and of the authorized and responsible heads of this organization;

(3) The name, address and telephone number of the person who will be the special event chairman of the event and who will be responsible for its conduct;

(4) The date when the special event is to be conducted, and whether the special event will extend over a series of days;

(5) The hours when the special event will start and terminate;

(6) The estimated number of people who will attend the event;

(7) If the special event is to be held by, and on behalf of or for, any person other than the applicant, the applicant for the permit shall file with the city clerk a written authorization from the person proposing to hold the special event, authorizing the applicant to apply for the permit on the applicant's behalf;

(8) A reasonably detailed description of the event, together will all location of which alcohol will be consumed; and

(9) Any additional information which the city manager shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(c) The city manager shall issue a permit as provided for in this section when, from a consideration of the application and from such other information as may be obtained, the city manager finds that:

(1) The conduct of the special event will not substantially interrupt the safe and orderly conduct of other patrons of the public places in which it will be held.

(2) The special event will not divert or disrupt police protection.

(3) The conduct of the special event is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance.

(4) The applicant for permit have not violated the terms of any previous special event permit granted to them or any terms of this chapter and have not caused undue traffic congestion and police problems under any previous special event permit.

(5) The city manager shall either issue or deny the permit within 15 days from the filing of the application.

(d) Any person aggrieved shall have the right to appeal the denial of a special events permit to the mayor and council. The appeal shall be filed with the city clerk within five days after the date of denial.

(e) A special event permit may be immediately revoked by the city manager for a violation of this chapter, which results in an emergency situation in which continued operation of the premises by the licensee endangers the health, welfare or safety of the public.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2012-005, 2-13-12; Ord. No. 2016-011, §§ I, II, 9-19-16)

Section 6-28. Permits for special events without sales.

Notwithstanding sections of this chapter, the city manager is authorized to issue permits for the consumption of, but not the sale of, alcoholic beverages in the city for special events, in the manner set forth below:

(1) Upon the filing of an application and payment of a filing fee of $25.00 and a permit fee of $50.00 per day, up to a maximum of $2,000.00 and after investigation by the city clerk, the city manager may issue a permit to an individual or organization for the consumption of alcoholic beverages during a special event under the following conditions.

a. If the event is to be held in a park, such person must first obtain the approval of the government.

b. The permit will allow sale of alcoholic beverages beyond the premises described in the annual license only in the area specifically described in the application and only during the special event named.

c. Food must be served during any period of time that alcoholic beverages are served.

d. Each special event shall last a maximum of seven consecutive days, and no more than two special event permits shall be issued to any applicant in any calendar year.

(2) The application for a special event permit shall set forth the following information:

a. The name, address and telephone number of the person seeking to conduct the special event;

b. If the special event is proposed to be conducted for, on behalf of or by an organization, the name, address, and telephone number of the headquarters of the organization, and of the authorized and responsible heads of this organization;

c. The name, address and telephone number of the person who will be the special event chairman of the event and who will be responsible for its conduct;

d. The date when the special event is to be conducted, and whether the special event will extend over a series of days;

e. The hours when the special event will start and terminate;

f. The estimated number of people who will attend the event;

g. If the special event is to be held by, and on behalf of or for, any person other than the applicant, the applicant for the permit shall file with the city clerk a written authorization from the person proposing to hold the special event, authorizing the applicant to apply for the permit on the applicant's behalf;

h. A reasonably detailed description of the event, together will all location of which alcohol will be consumed; and

i. Any additional information which the city manager shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(3) The city manager shall issue a permit as provided for in this section when, from a consideration of the application and from such other information as may be obtained, the city manager finds that:

a. The conduct of the special event will not substantially interrupt the safe and orderly conduct of other patrons of the public places in which it will be held.

b. The special event will not divert or disrupt police protection.

c. The conduct of the special event is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance.

d. The applicant for permit have not violated the terms of any previous special event permit granted to them or any terms of this chapter and have not caused undue traffic congestion and police problems under any previous special event permit.

e. The city manager shall either issue or deny the permit within 15 days from the filing of the application.

(4) Any person aggrieved shall have the right to appeal the denial of a special events permit to the mayor and council. The appeal shall be filed with the city clerk within five days after the date of denial.

(5) A special event permit may be immediately revoked by the city manager for a violation of this chapter, which results in an emergency situation in which continued operation of the premises by the licensee endangers the health, welfare or safety of the public.

(Ord. No. 2005-008, 12-12-05)

Section 6-29. Advertisement of sale of alcoholic beverages.

(a) Licensee shall not display any signs of any kind, painted or electric, advertising directly or indirectly the sale of alcoholic beverages other than in the principal building for which the license is issued, and such signs displayed within the principal building shall not be displayed on the outside or inside of the front window or wall within view of the passing general public from the sidewalk or street.

(b) No plaque or sign of any kind which is visible from the exterior of the principal licensed building shall make reference to the price of any alcoholic beverage.

(c) Notwithstanding the foregoing, no trade name, corporate name or name of a business shall be allowed to use the work "beer" or "liquor" or "beer and liquor" in such name.

(Ord. No. 2005-008, 12-12-05)

Section 6-30. Location restrictions.

(a) *Wholesale and retail package sales of wine and malt beverages.* No license to sell malt beverages or wine for package sales shall be issued by the city council to or for:

(1) A location at which the operation of the proposed business would be in violation of the zoning ordinance of the city.

(2) A location within 100 yards of any school, college, public park, or church provided such distances shall be measured from the property line of the business premises along the most direct route of travel to the property line of school, college, park, or church at the point where the property lines are nearest each other.

(3) Brewery retail sales. A brewery shall be allowed to make retail package sales of malt beverages manufactured at the brewery to consumers but shall sell no more than 288 fluid ounces of packaged malt beverages to a consumer during a 24-hour period.

(b) Alcoholic beverage consumption on the premises.

(1) The distance set out in this section shall be measured in a straight line from the property line of the business premises to the property line of the resident, church or school.

(2) No license for retail sales alcoholic beverages for consumption on the premises shall be issued to any retailer under this article where any point of the real property upon which the business of the applicant is to be located is within 150 yards of any point of the property upon which any church, school or public park is located or operated.

(3) The schools referred to in this section shall include only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools of this state, and shall not include private schools or colleges wherein only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

(4) A license for retail sales of alcoholic beverages for consumption on the premises shall be issued only to the applicants that meet the requirements of this article for a hotel, motel, restaurant, private club or for other specific activities outlined in this article.

(5) The provisions of this subsection shall not apply as to the consumption of alcohol by the drink on premises only within the downtown development area as established by the city council from time to time so that within the said downtown development area there shall be no distance requirements from churches, schools and colleges and public parks as to the consumption of alcohol by the drink on the premises only.

(6) No alcoholic beverages shall be sold or offered for sale in violation of O.C.G.A. § 3-3-21; provided, however, that the provisions of this section shall not apply as to the consumption of alcohol by the drink on premises within the central business district as established by the city council from time to time, so that within the said central business district area there shall be no distance requirements as to the consumption of alcohol by the drink on the premises as set forth in this section.

(c) A private residence, for the purpose of this section is defined as a house or dwelling wherein not less than one nor more than two families reside and shall not include an apartment house having facilities for housing more than two families, nor a boarding or rooming house where there are five or more boarders or roomers. Any building occupied as a residence located within an area zoned for business shall not be construed as a private residence.

(d) No license for retail sales of alcoholic beverages for consumption on the premises shall be issued to any location which is within 150 feet of any private residence, that distance to be measured from the nearest point of the property line of the proposed business to the nearest point of the residential building except in the central business district where there is no distance restriction.

(e) No license to sell alcoholic beverages shall be issued by the city for a location at which the operation of the proposed business would be in violation of the zoning ordinance of the city.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2014-050, 12-15-14; Ord. No. 2016-011, § III, 9-19-16; Ord. No. 2019-005, § 2, 5-20-19)

Section 6-30.1. Location and operation regulations for distilled spirit package sales.

(a) *Location of distilled spirits package stores.* No retail establishment selling distilled spirits by the package shall be located where prohibited by state law. No retail establishment selling distilled spirits by the package shall be located within 1,000 yards of an existing retail establishment selling distilled spirits by the package. No retail establishment selling distilled spirits by the package shall be located within 100 feet of a residentially zoned parcel.

(b) *Measurement of distance.* All measurements to determine distances required shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:

(1) In a straight line from the front door of the structure from which alcoholic beverages are sold or offered for sale;

(2) To the front door of the building of a church, government-owned treatment center or a retail package store; or

(3) To the nearest property line of the real property being used for school or educational purposes; and

(4) From the nearest wall enclosing the structure from which alcoholic beverages are sold or offered for sale to the nearest point of any residential property line.

(c) *Building requirements.* No retail dealer license for the sale of distilled spirits by the package shall be issued to any applicant whose building where the business will be conducted: (a) is not a "free standing" building (i.e., is part of a larger building or structure), and (b) does not include a showroom with a minimum of 2,500 square feet of floor space and an additional storage area of at least 500 square feet of floor space. The applicant/licensee shall be the owner of the real estate lot where the building is located. Buildings used for the sale of distilled spirits by the package shall have only one entrance into the building for customers and the entrance shall be clearly visible from a public street. Deliveries to the premises shall be made at the rear of the store building and all loading areas, dumpsters, recycling bins and compacters shall be screened from ground view. The premises upon which distilled spirits are sold by the package shall be maintained in safe and sanitary conditions and shall be lighted with shielded lighting to illuminate the exterior building and the surrounding curtilage. Any licensed premises for the sale of distilled spirits shall provide fully operational security cameras on the exterior and interior of the building which captures all activities within the establishment and outside the establishment.

(d) *Merchandise restrictions.* No retailer of distilled spirits by the package shall sell, offer for sale, display, or keep in stock for sale or furnish at its licensed premises where distilled spirits are offered for sale by the package, any other products or services except the following:

(1) Wines, if the retailer holds a valid and current license to sell wine at that place of business;

(2) Malt beverages, if the retailer holds a valid and current license to sell malt beverages at that place of business;

(3) Cigarettes, cigars, chewing tobacco, alternative nicotine products, or vapor products, snuff, if properly licensed to do so, cigarette papers, lighters and matches, chewing gum, breath mints, manufactured packaged consumable single-serving snack items not requiring any preparation for consumption, single-serving pain medications, and over-the-counter birth control devices;

(4) Beverages containing no alcohol and which are commonly used to dilute distilled spirits;

(5) Packaged ice, ice chests, and "koozies" (individual can and bottle coolers). The term "packaged ice" shall refer only to ice in packages of five pounds or greater that is also in compliance with Georgia Department of Agriculture Rule 40-7-1-.08, entitled "Food from Approved Source," and the packaging complies with Georgia Department of Agriculture Rule 40-7-1-.26, entitled "Labeling;"

(6) Paper, Styrofoam, or plastic cups, gift bags, which are limited in size to accommodate one 750 ml size bottle of wine or distilled spirits, and contain only products approved for sale or display by this regulation.

(7) Lottery tickets issued by the Georgia Lottery Corporation and any approved Georgia Lottery Corporation lottery materials, provided such retailer is also an authorized retailer of the Georgia Lottery Corporation;

(8) Bar supplies, limited to:

a. Corkscrews, openers, straws, swizzle stirrers, and bar-related containers, and wares made of glass, plastic, metal or ceramic materials, or

b. Cocktail olives, onions, cherries, lemons, limes, and sugars or salts produced and marketed specifically for the preparation of alcohol beverage drinks, or

c. Alcoholic beverage drink recipe booklets, bar guides, and consumer-oriented alcoholic beverage publications;

(9) Products co-packaged with alcoholic beverages, provided that the products are limited to items approved for sale or display by this regulation, are offered for sale and sold as a single unit, and do not include more than one type of alcoholic beverage product; and

(10) Automated teller machine service for customer use.

(e) *Failure to operate for six consecutive months.* Any holder of a license for the retail sale of distilled spirits who shall begin the operation of the business and sale of the product or products as authorized in the license but who shall for a period of six consecutive months thereafter cease to operate the business and sale of the product or products authorized in such license, shall upon completion of the six month period automatically forfeit his or her license, which license shall, by virtue of such failure to operate be canceled without the necessity of any further action of the mayor and council.

(f) *Exterior advertisement of brand and price prohibited.* No sign of any kind, painted or electric, advertising any price of alcoholic beverages shall be permitted on the exterior, or in the window, of any licensed premises. No placard or sign of any kind which is visible from the exterior of the licensed premises shall make reference to the price of any liquors or other alcoholic beverages sold therein; provided, however, that tags showing the prices of individual bottles or containers shall be affixed to each such bottle or container or to the edge of the shelf whereon such bottles or containers are located.

(g) *Sale at price less than cost.* No person licensed to sell distilled spirits by the package shall sell such beverages at a price less than the cost which such licensee pays for such distilled spirits. As used in this subsection, cost shall include the wholesale price plus the local excise tax imposed, as reflected in invoices which the commissioner of revenue may require to be maintained on said licensee's place of business.

(h) *Gambling devices prohibited.* No retailer of distilled spirits by the package shall permit on his or her premises any gambling device or machine as the same are now or may hereafter be defined by the statutes or the judicial decisions of the state or the United States of America, or any gambling, betting, or the operation of games of chance or any scheme or device involving the hazarding of money, or any other thing of value in or upon the licensed premises, or any portion thereof, or in any room adjoining the same which is connected or which is leased or controlled by the licensee. This provision shall not prohibit the sale of lottery tickets pursuant to the Georgia Lottery for Education Act.

(i) *Financial transaction prohibited.* For profit financial transactions such as check cashing services provided for a fee, money order sales, loans and pawns are prohibited.

(Ord. No. 2022-003, § VII, 2-21-22)

Section 6-31. Penalties for violation of chapter; application irregularities.

(a) Any person who acquires a license, or a renewal thereof, in violation of this chapter by any misrepresentation or fraudulent statement, or who, after acquiring a license, is found to have violated any of the provisions of this chapter and shall be found guilty of any such offense, upon conviction thereof, shall be punished as provided in section 1-12 of the City Code. Each day's continuance of a violation shall be considered a separate offense.

(b) Any untrue or misleading information contained in, or material omission left out of an original, renewal or transfer application for a license under this chapter shall be cause for the denial thereof; and if any license has been granted under these circumstances, such license may be revoked.

(c) Revocation of a license for violation of this article shall be for a minimum of six months and a maximum of 24 months, the period to be determined at the discretion of the municipal judge. A total of three separate and unrelated violations shall constitute grounds for permanent revocation.

(d) Any person violating any of the provisions of this chapter shall, on conviction therefore in the municipal court of the city, be punished as provided in section 1-12 of the City Code, or be subject to revocation of his license, or both, at the discretion of the municipal court judge. Such penalties may be levied against each separate offense of this article.

(Ord. No. 2005-008, 12-12-05)

Section 6-32. Zoning requirements for license location.

No license for retail sales of any alcoholic beverage for consumption on the premises shall be issued within the areas described in this article unless the location has been zoned C-1, C-2, or CBD (Central Business District) under the zoning rules and regulations of the city.

(Ord. No. 2005-008, 12-12-05)

Section 6-33. Conflict of financial interests.

It shall be unlawful for any person to hold a retail alcoholic beverage license who also has any direct financial interest in any wholesale alcoholic beverage license. It shall be unlawful for the holder of any retail license to accept or receive financial aid or assistance from the holder of any manufacturer's or wholesaler's license.

(Ord. No. 2005-008, 12-12-05)

Section 6-34. Prohibited conduct generally.

(a) No holder of a license for wholesale or retail alcoholic beverage sales in the city nor any agent or employee of the licensee shall do any of the following upon the licensed premises and violation hereof shall be grounds for suspension or revocation of the license.

(1) Knowingly furnish or cause to be furnished or permit any other person in his employ to serve or furnish alcoholic beverages to a minor.

(2) Knowingly sell alcoholic beverages to any person while such person is in an intoxicated condition.

(3) Allow any minor to be in, frequent, or loiter on or within the licensed premises unless such minor is accompanied by a parent or legal guardian or unless such minor is an employee as allowed by section 6-39.

(4) Permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practice on the licensed premises.

(5) Sell or offer for sale alcoholic beverages by use of vending machines.

(6) Sell, offer for sale, possess, or permit the consumption on the licensed premises of any kind of alcoholic beverages, the sale, possession or consumption of which is not authorized under the license.

(7) Receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a conveyance owned and operated by a wholesale dealer with a permit and license from the city to make such deliveries.

(8) Permit or allow the consumption of alcoholic beverages purchased elsewhere on the licensed premises, except as authorized by Article II of this Chapter.

(9) Make or allow to be made any false statement on any application, reapplication, or other documents required to be furnished by federal, state or local law, regulations or ordinances.

(10) Violate, either personally or through an agent or employee, any federal, state or local law, regulation or ordinance, except traffic violations. The determination of whether any such violation has occurred shall be made by the city council and a formal accusation, indictment, charge or conviction by a governmental agency for such offense shall not be necessary in order to suspend or revoke the license.

(11) Make deliveries of any alcoholic beverage beyond the boundaries of the premises covered by the license.

(12) Store any alcoholic beverages anywhere other than the premises for which the license is issued.

(13) Reserved.

(14) The failure of the license holder or his/her employee to report promptly to the city police any violation of law or of this chapter, breach of the peace, disturbance or altercation resulting in violence, occurring on the premises, including, but not limited to parking lots and parking areas.

(15) The failure of the license holder to adequately supervise and monitor the conduct of employees, patrons and others on the premises, including, but not limited to, parking lots and parking areas, in order to protect the safety and well-being of the general public and of those utilizing the premises.

(16) No retail licensee of distilled spirits by the package shall employ any person under the age of 21 or any person in any capacity whatsoever who has been convicted in this or any state or by the United States or any other country of soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses or any charge relating to unlawful manufacture or sale of intoxicating liquors or other crime involving moral turpitude. It shall be the duty of the licensee to maintain a list of all current employees which shall include their full name, home address and phone which shall be subject to inspection by the chief of police.

(b) Any alleged violation of this chapter shall be reported by any person to the city manager who shall have the power, in his/her discretion to suspend the license for a period not to exceed ten days pending a hearing before the city council on the question of whether or not the license shall be revoked for cause or suspended, pursuant to section 6-20.

(c) The city police chief or his/her designated shall have the authority to close any location holding an alcoholic beverage license for a period not in excess of 24 hours in the event there shall occur on the premises any violation of law or of this chapter, breach of the peace, disturbance or altercation resulting in violence, or other occurrence which is contrary to the public health, welfare, safety or morals, when in the judgment of the police such action is necessary to protect the public health, welfare, safety or morals of the community.

(d) The city council shall have the right to suspend any alcoholic beverage license pending the hearing provided for in section 6-20 where in the judgment of the council, such action is necessary to protect the public health, safety, welfare, or morals.

(e) Any suspension as provided herein shall be in writing, with the reasons therefore stated and shall be delivered to a license holder or the person in charge of the place of business if the license holder cannot be located.

(Ord. No. 2005-008, 12-12-05; Ord. No. 2008-017, 12-8-08; Ord. No. 2022-003, § VIII, 2-21-22)

Section 6-35. Purchase, attempted purchase; consumption, possession by minors.

(a) It shall be unlawful for any minor to purchase or attempt to purchase, drink or possess any alcoholic beverage in the city.

(b) No person shall knowingly and intentionally act as an agent to purchase or acquire any alcoholic beverages for or on behalf of a minor, or otherwise procure for or furnish to a minor any alcoholic beverage, except for medical purposes upon the written prescription of a duly licensed physician under the laws of the state.

(c) It shall be unlawful for any minor to falsely represent his or her age in any manner whatsoever in violation of this article or other applicable laws.

(Ord. No. 2005-008, 12-12-05)

Section 6-36. Knowledge, publication of article; responsibility of licensee.

The holder of any license under this article shall have available in his place of business at all times the current copy of this article and shall be responsible for compliance with this article by all persons on the premises.

(Ord. No. 2005-008, 12-12-05)

Section 6-37. Inspection of premises.

Licensed premises operated under this article shall be open to inspection by authorized personnel of the city at any and all times.

(Ord. No. 2005-008, 12-12-05)

Section 6-38. Examination of books, papers, etc.

The city or any person authorized in writing by the city may examine the books, papers, records, financial reports, equipment and other facilities of any licensee in order to verify the accuracy of any return or report made or to ascertain and determine the amount of tax or other fee required to be paid. The city may require the filing of reports by any person or class of persons having in such person's possession or custody information related to purchases which are subject to the tax imposed by this article.

(Ord. No. 2005-008, 12-12-05)

Section 6-39. Personal restrictions on interest.

(a) Not more than one license shall be issued to any one person, which shall include all members of that person's family.

(b) For the purposes of this section, the word "family" includes any person related to the holder of the license within the first degree of consanguinity or affinity as computed according to the civil law.

(c) No person or member of his family shall own, hold or control any interest whatsoever in more than one licensee unless the licensee is a corporation which owns or controls a chain of hotels, motels, or restaurants.

(d) It shall be unlawful for any elected or appointed official or employee of the city, or the spouse or minor children of such official or employee, to have any whole, partial or beneficial interest in any license.

(e) A licensee may take in partners or additional stockholders; provided, any such additional partner or stockholder must be approved by the mayor and council.

(f) No license to engage in the sale of alcoholic beverages for consumption on the premises shall be issued for a location which also is licensed to sell package malt beverages or wine.

(Ord. No. 2005-008, 12-12-05)

Section 6-40. Display of license number.

Each person licensed to sell alcoholic beverages for consumption on the premises shall have printed on the front window adjacent to the main entrance of the licensed premises the inscription "City License No. _____" in uniform letters not less than three inches and not more than four inches in height.

(Ord. No. 2005-008, 12-12-05)

Section 6-41. Employees.

(a) No licensee shall employ any person under the age of 18 years or who has been convicted in this or any state or by the United States or any other country of soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses, or any charge relating to the unlawful manufacture or sale of intoxicating liquors or any other crime involving moral turpitude within ten years immediately prior to the date of employment, and employment of such a person subjects the licensee to suspension or revocation of the license by the city council.

(b) Minors under 18 years old may be employed in or about places of business where alcoholic beverages are sold, provided the minors shall not be allowed or required to dispense, sell, deliver off premises, or take orders for alcoholic beverages, or in any manner aid or assist in the dispensing, sale, delivery, or take orders for such beverages as per state law.

(c) Alcoholic beverages shall be served only by employees of the licensee.

(Ord. No. 2005-008, 12-12-05)

Section 6-42. Condition of premises.

(a) All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with the provisions and regulations governing the conditions of premises used for the storage and sale of food for human consumption.

(b) The fire and/or the police department shall, upon request of the city manager and/or the city council, inspect each premises and report its findings to the same. All premises licensed under this article shall conform at all times with all state and local fire regulations.

(Ord. No. 2005-008, 12-12-05)

Section 6-43. City sponsored events.

(a) Whenever the city council shall determine that the public interest would be served by such action, the council may designate by resolution that the provisions of ordinance section 46-5 shall not apply to city sponsored events at such place, at such time and in such manner as specifically designated by resolution.

(b) In the event that the city council does enact a resolution excepting a specific event from the provisions or ordinance section 46-5, the following provisions shall control in that instance:

(1) *Two-drink on street limit.* Any establishment licensed to dispense beer or wine only (and not distilled spirits) in a paper or plastic cup, or other container other than a can, bottle, or glass, away from or for removal from the premises; however, that no establishment shall dispense to any person more than two such alcoholic beverages at a time away from or for removal from the premises, and no person shall possess or remove at one time more than two such alcoholic beverages from the licensed

premises. A single one-half carafe container shall be considered to be two such alcoholic beverages, may exceed this limit during the performance of their duties, if allowed by the resolution.

(2) *Size limited to 16 ounces for single beverage or one-half carafe for wine.* No container in which beer or wine is dispensed pursuant to this section shall exceed 16 fluid ounces in size for a single drink; provided, however, that wine may be dispensed in a one-half carafe container not exceeding 20 fluid ounces in size. No person shall hold in his or her possession on the streets and sidewalks, in parks and squares, or in other public places within the defined area any open alcoholic beverage container which exceeds the restrictions contained in this section.

(3) *Drinking from can, bottle, or glass prohibited.* It shall be unlawful for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and parking lots, whether public or private. The paper or plastic cup or container in which the alcoholic beverages must be served pursuant to this section at city sponsored events shall be only cups or containers provided by the city, no other cup or container shall be used.

(Ord. No. 2016-011, § IV, 9-19-16)

Section 6-44. Regulations for issuance of initial licenses for retail sales of distilled spirits by the package.

(a) This section shall apply only to the application for and issuance of the first two licenses for retail sales of distilled spirits by the package to be issued in the city (herein referred to as the "initial licenses"). Except as modified in this section, all applications for initial licenses must comply with all applicable requirements of this chapter. Once the two initial licenses are issued, this section shall be of no further force or effect.

(b) Applicants for the initial licenses who currently hold a valid license from the city for the retail sale of beer and wine by the package shall be considered for the issuance of an initial license before any initial license may be granted to an applicant who does not currently hold a valid license from the city for the retail sale of beer and wine by the package.

(c) Applicants for the initial licenses must either: (1) currently have a building ready for use as the licensed premises as described in section 6-30.1, or (2) have a building ready for use as the licensed premises as described in section 6-30.1 within 274 days of the issuance of the license provided however that if the applicant fails to have a building ready within said 274 days, the license shall be automatically and immediately revoked and the city council may, by resolution, establish a time period for accepting new applications for any remaining initial license then available, subject to the terms of this section.

(d) Applications for the initial licenses must be fully complete to be accepted for filing and must be filed with the city clerk from 9:00 a.m. on March 31, 2022 until 4:00 p.m. on March 31, 2022. Issuance of the initial licenses shall then be reviewed by the city and issued as provided in subsection (e) no later than April 19, 2022. Initial licenses shall be effective upon issuance and shall expire December 31, 2022.

(e) Applications which are complete and which have a building ready for use as set forth in subsection (c) above shall be given priority for issuance of the initial licenses. If more than two applications qualify for priority, then the initial licenses shall be awarded by a lottery drawing of the applications which qualify for priority. If less than two applications qualify for priority then, after awarding a license to any priority application, the remaining initial license(s) shall be awarded by a lottery drawing of the remaining qualified applications.

(Ord. No. 2022-003, § IX, 2-21-22)

Section 6-45—6-99. Reserved.

ARTICLE II. ENTERTAINMENT DISTRICT

Section 6-100. Creation of entertainment district boundaries.

The Entertainment District shall comprise the area within the boundaries described herein and shown on the map attached in Exhibit A, which is attached hereto and incorporated by reference as if fully set forth herein. All references herein to the "Entertainment District" shall refer to that area that is specifically set forth. These boundaries may be changed by a duly enacted ordinance of the Commerce City Council. The boundaries of the Entertainment District shall be as follows:

Beginning at the intersection of the centerline of Little Street and the centerline of Central Avenue, thence northeast along the centerline of Central Avenue to the centerline of Line Street, thence east along the centerline of Line Street extended to the western boundary of the City parking lot on tax map parcel C05-036A, thence south along said boundary line to the centerline of State Street, thence east along the centerline of State Street to the centerline of Cherry Street, thence south along the centerline of Cherry Street to the intersection with the centerline of Sycamore Street, thence southwest along the centerline of Sycamore Street to the centerline of South Broad Street, thence southeast along the centerline of South Broad Street to the intersection with the centerline extended of Oak Street, thence southeast along the centerline of Oak Street to the centerline of Little Street, thence northwest along the centerline of Little Street to the point of beginning.

(Ord. No. 2025-0001, § 1, 6-16-25)

Section 6-101. Definitions.

Brewery and microbrewery means a place where malt beverages are manufactured or brewed as prescribed by Georgia Law.

Brewpub means any restaurant or eating establishment in which beer or malt beverages are manufactured or brewed as prescribed by Georgia Law.

Taproom means an establishment whose primary purpose is in the sale of malt beverages and wine.

Section 6-102. Specialty Cup required for consumption of alcoholic beverages off premises.

(a) A Specialty Cup is hereby defined as a clear, plastic cup with the City of Commerce logo affixed thereto, not to exceed 16-ounces and which notes the date of use written by the providing business. The Cup shall be purchased from the Main Street office or shall be approved by the Main Street office. Each Specialty Cup shall also have affixed thereto the business logo of the establishment furnishing the Cup.

(b) Those persons desiring to possess or consume off premises any alcoholic beverages which were purchased from a Brewpub, Brewery, Microbrewery, Taproom or Restaurant located within the Entertainment District shall possess or consume such beverages only from a Specialty Cup provided, however, that no establishment shall dispense to any person more than two (2) such Specialty Cups at a time for removal from the premises, and no person shall possess or remove at one (1) time more than two (2) such Specialty Cups away from the licensed premises.

(c) Each Brewpub, Brewery, Microbrewery, Taproom or Restaurant within the Entertainment District shall provide Specialty Cups with the establishment's logo affixed thereto in order to allow persons to leave its premises with alcoholic beverages within a Specialty Cup.

(d) Businesses must serve their customers alcohol from their Specialty Cup that is branded to their business. Alcohol may not be served in a cup from another establishment.

(e) Each business within the Entertainment District shall have the discretion to choose whether to allow persons to enter its premises with a Specialty Cup from another business containing alcoholic beverages.

(f) Each Brewpub, Brewery, Microbrewery, Taproom or Restaurant within the Entertainment District choosing to allow persons to either leave its premises or to enter its premises with a Specialty Cup containing alcoholic beverages shall notify the City of Commerce so that Specialty Cups can be provided and so that the City will have knowledge as to which businesses are participating.

(g) Persons are not allowed to possess a Specialty Cup containing an alcoholic beverage while in a motor vehicle.

(h) Any licensed establishment that allows patrons to leave the establishment with an alcoholic beverage in an open container as provided in this Article shall maintain posted inside all exit doors for clear public view a map of the current boundaries of the Entertainment District and a sign of at least 11-inches by 8-½inches that states the following:

a. "All Patrons leaving this establishment with an alcoholic beverage in an open container do hereby assume full responsibility to consume such alcoholic beverage only if it has been served in a clear, plastic cup labeled with Entertainment District logo, not to exceed 16 ounces in size and obtained from an establishment licensed to sell alcoholic beverages within the entertainment district outlined on the map below. Any individual who leaves the Entertainment District with an alcoholic beverage in an open container is in violation of the City of Commerce Code of Ordinances and may be subject to a citation, arrest, incarceration, and/or fine pursuant to the Code of Ordinances."

(i) Establishments licensed to sell or serve alcohol within the Entertainment District may allow the removal of such Specialty Cups from the premises between the hours of 11:00 a.m. until 11:00 p.m. Monday thru Sunday.

(j) A person's display of a Specialty Cup does not relieve an establishment licensed to dispense alcoholic beverages by the drink for consumption of their responsibility to determine if a person has attained the age of 21 years before dispensing alcohol to that person in said Specialty Cup or otherwise.

(Ord. No. 2025-0001, § 1, 6-16-25)

Section 6-103. Suspension of Food/Alcohol ratio.

The condition that any restaurant or eating establishment is required to derive at least 51 percent of its annual gross food and beverage sales from the sale of prepared meals or foods shall not be suspended within the boundaries of the Downtown Commerce Entertainment District, to include Taprooms, Breweries, Microbreweries and Brewpubs.

(Ord. No. 2025-0001, § 1, 6-16-25)

Section 6-104. Licensing; Special Events; Operations.

Notwithstanding any provision to the contrary, the Downtown Development Authority with approval of the City Council may modify or suspend the hours of operation in the Entertainment District and may provide a temporary special event license for all businesses with the downtown area as defined by the Downtown Development Authority of the City of Commerce.

(Ord. No. 2025-0001, § 1, 6-16-25)

Section 6-105. Inapplicability.

This ordinance and the privileges allowed pursuant to this ordinance will not be applicable during the following special events:

(a) Easter Parade and Egg Hunt;

(b) Summer in the City Music and Fireworks Festival;

(c) Christmas Parade; and

(d) Any other event as determined by City Council.

(Ord. No. 2025-0001, § 1, 6-16-25)

Chapter 10 ANIMALS

ARTICLE I. IN GENERAL

Section 10-1. Title and purpose.

This article may be referred to as the "Commerce Animal Control Ordinance." The purpose of this article shall be to implement the provisions of O.C.G.A. § 4-8-20 et seq. relating to dangerous dog control (the "Act").

(Ord. No. 2019-009, 7-15-19)

Section 10-2. Vaccination; license tag required for dogs and cats.

Every owner of a dog or cat four months of age or older shall cause such dog or cat to be vaccinated against rabies. Dogs and cats will be revaccinated annually thereafter. When dogs or cats one year of age or older are vaccinated with vaccines accepted by the state or city for providing a three-year duration of immunity, boosters will be required every three years. Upon vaccination, veterinarians shall be responsible for issuing a metal tag with a vaccination and identification number. Tags must be renewed within 30 days of the expiration date of the vaccination.

(Ord. No. 2019-009, 7-15-19)

Section 10-2.1. Adoption and incorporation by reference of county animal control ordinance.

The City of Commerce hereby adopts and incorporates herein by reference thereto and makes a part of this chapter the Jackson County Animal Control Ordinance, Ordinance Number 16-008 dated December 19, 2016, amended by Ordinance Number 21-001 on January 4, 2021.

(Ord. No. 2022-007, 9-19-22)

Section 10-2.2. Authority of county animal control officers.

Jackson County Animal Control Officers are hereby granted authority to enforce Chapter 10 of the Code of Ordinances of the City of Commerce, including, but not limited to, the Jackson County Animal Control Ordinance as adopted in Section 10-2.1, within the city limits of the City of Commerce. Any prosecution or citation issued by Jackson County Animal Control Officers for violation of Chapter 10 of the Code of Ordinances of the City of Commerce, Georgia, shall be subject to the jurisdiction and venue of the Magistrate Court of Jackson County. This Section shall not diminish or reduce the authority of City Police Officers or City Code Enforcement Officers to enforce the provisions of Chapter 10 of the Code of Ordinances of the City of Commerce, Georgia. Any prosecutions or citations prosecuted by City Police Officers or City Code Enforcement Officers shall be subject to the jurisdiction and venue of the Municipal Court of the City of Commerce.

(Ord. No. 2022-007, 9-19-22)

ARTICLE II. DOMESTIC ANIMAL CONTROL

Section 10-3. 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:

Abandon means the act of placing an animal on public property or within a public building, unattended or uncared for, or on or within the private property of another without the express permission of the owner, custodian or tenant of the private property. An animal shall also be considered abandoned when it has been unattended and without adequate food, water, ventilation or shelter, for a period in excess of 36 hours, regardless of where such animal may be found or kept.

Adequate food means sufficient quantity of non-contaminated and nutritionally healthy sustenance that is appropriate to the species, breed, size, age and health of the animal, or at the direction of a licensed veterinarian, which is sufficient to prevent starvation, malnutrition, or risk to the animal's health. Garbage, spoiled, rancid, or contaminated food is not adequate food.

Adequate shelter means a protective covering for an animal that is of adequate size and provides adequate protection to maintain the animal in a state of good health, and that prevents pain, suffering, or significant risk to the animal's health. Adequate shelter shall consist of a completely enclosed structure with four sides with a door opening, a constructed floor, and a roof. It should also be clean, dry and compatible with current weather conditions, in addition to age, size, species and condition of the animal. The structure should be of sufficient size to allow the animal to stand, turn around, lie down and go in and out of the structure comfortably. To be adequate, some type of bedding that is quick drying, such as hay or pine straw, must be provided to maintain comfortable temperatures within the structure during times when the ambient, outside temperature is below freezing. In addition, the structure shall include a heavy plastic or rubber flap to cover the door and/or window openings during the months of November through March. From April through October, the structure shall either be shaded or moved out of direct sunlight. If the shelter is made of wood, it shall be raised at least two inches off the ground to prevent seepage or rotting. Examples of inadequate shelter include, but are not limited to, lean-tos, metal or plastic drums, boxes, abandoned vehicles, porches, decks, or material that does not provide sufficient protection from the elements.

Adequate space means a sufficient safe space for adequate exercise suitable to the age, size, species and breed of animal. For dogs, adequate space means an enclosure with a minimum of 150 square feet per dog.

Adequate water means potable water in adequate supply. Examples of inadequate water include, but are not limited to: snow, ice and rancid/contaminated water.

Animal control facility means and includes any vehicle, building, structure, pasture, paddock, pond, impoundment area or premises where any animal is kept or housed by the animal control unit for the purpose of impounding or harboring stray, homeless, abandoned, unwanted, neglected or abused animals.

Animal control officer means an employee of the animal control unit duly sworn under the legal authority of the city to enforce the rules and regulations of this article.

Animal control unit means the division of animal control within the Commerce Police Department responsible for the enforcement of this article.

Animal at large means any animal not under restraint and off the property of its owner.

Animal under restraint means any animal secured by a leash or lead; or enclosed by way of fence or other enclosure; or under the control of a responsible and competent person and obedient to that person's commands, and the person being present with the animal; or an animal confined within a vehicle, parked or in motion.

Cruelty means causing death or unjustifiable pain or suffering to an animal by an act, an omission, or neglect.

Dangerous dog means any dog that has without provocation inflicted severe injury on a human being or, if such dog has previously been classified as a potentially dangerous dog, has aggressively bitten, attacked or

endangered the safety of a human being without provocation. However, no dog may be declared dangerous if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the dog or was committing or attempting to commit a crime. The definition shall not be construed to include any dog that is part of a governmental organization or a trained guard dog in performance of its duties.

Dogs running at-large means any dog not under immediate control, not on a leash, not at heel, not beside a competent person, not in a vehicle driven or parked, or not confined within the property limits of his owner. Hunting and tracking dogs are under the control of the owner when hunting with the landowner's permission.

Domesticated animals means animals that are accustomed to living in or about the habitation of men, including, but not limited to, cats, cows, dogs, fowl, horses, swine, domesticated wild animals and/or exotic animals.

Guard or protection dog means any dog which has been trained to attack persons or other animals independently or upon oral command and any dog which, while not so trained, is reasonably expected to perform as a guardian of the property upon and within which he is located.

Impoundment means the act of taking physical possession and control of an animal by an animal control officer or other officer empowered to act by law and transporting it to the animal control facility.

Livestock means and includes horses, cows, goats, pigs or any other hoofed animal used for pleasure or profit. Fowl and rabbits are expressly included within this definition.

Necessary veterinary care means veterinary medical attention appropriate to the circumstances, whenever an animal is known or suspected to have suffered an injury, accidental or deliberate, or exhibits signs of disease process such as shock, temperature fluctuation, tremors, swelling, broken bones, open wounds, inability to eat or drink, blistering, irregular or abnormal breathing, partial or total paralysis, abnormal discharge or bleeding, mange, or other signs of health problems.

Owner means any person who owns, keeps, harbors or acts as custodian of a domesticated animal.

Police officer means any law enforcement officer empowered to make arrests or cause to be issued summonses in the city limits of Commerce.

Potentially dangerous dog means any dog with a known propensity, tendency or disposition to make unprovoked attacks, cause injuries or otherwise threaten the safety of any human being. Potentially dangerous dog shall also mean any dog which, when unprovoked, inflicts a bite upon a human being or chases or approaches a human being on any public property in a vicious or terrorizing manner in an apparent attitude of an attack.

Proper enclosure means an enclosure that meets all of the following criteria:

(1) A structure which is suitable to prevent the entry of young children and to prevent the animal from escaping;

(2) A structure with secure sides to all sides;

(3) A structure whose sides are so constructed at the bottom so as to prevent the dog's escape by digging under the sides. The sides must either be buried two feet into the ground or sunken into a concrete pad;

(4) A structure which provides appropriate protection from the elements for the dog. The structure must contain adequate shelter inside it;

(5) The gate to the structure shall be of the inward-opening type and shall be kept locked except when tending to the animal's needs such as cleaning the kennel or providing food and water.

Provocation means committing a willful trespass or other tort upon the premises occupied by the owner or possessor of the animal, or teasing, tormenting, or abusing the animal or committing or attempting to commit a crime against a person.

Public nuisance means any animal which:

(1) Is found at large in violation of section 10-05;

(2) Is vicious; and for the purpose of this section an animal shall be considered vicious if it attacks without provocation any human being or other domesticated animals;

(3) Produces, because of quantity, manner or method in which the animals are domesticated or maintained, unsanitary conditions in the city;

(4) Attacks passersby or passing vehicles; or

(5) Is inimical to the public health, welfare or safety according to the rules and regulations promulgated by the county health department, whose rules and regulations are incorporated herein and made a part of this article as if fully set out.

Any person that knowingly keeps, owns, harbors or acts as custodian of an animal constituting a nuisance shall be guilty of an unlawful act and shall be punishable as provided in this article.

Sanitary conditions means an animal living space, shelter, or exercise area that is not contaminated by health hazards, irritants, pollutants, items, or conditions that endanger or pose a risk to an animal's health.

Severe injury means any injury which results in a broken bone, lacerations severe enough to require multiple sutures or to render cosmetic surgery necessary or appropriate, or death.

Tethered means an animal attached to a stationary object or pulley system by a chain, rope, cable or similar device. This shall not include using a leash for walking purposes.

Vicious dog means any dog that inflicts a severe injury on a human being without provocation after the owner has notice that the dog has previously bitten or attacked or endangered the safety of a human being and/or any dog that is owned, possessed, kept, harbored, trained, or maintained for the purpose of fighting. Such term shall not include a dog that inflicts an injury upon a person when the dog is being used by a law enforcement officer to carry out the law enforcement officer's official duties. A dog shall not be considered a vicious dog if the injury inflicted by the dog was sustained by a person who, at the time, was committing a willful trespass or other tort or was tormenting, abusing, or assaulting the dog or had in the past been observed or repotted to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

(Ord. No. 2019-009, 7-15-19)

Section 10-4. Penalties for violation of article.

Unless otherwise specified in this article, the following penalties shall apply: Any person violating this article may be deemed guilty of violating a city ordinance and may be punished by a fine not to exceed $500.00 and by imprisonment not to exceed six months, or both fine and imprisonment. Each act or omission in violation of this article shall constitute a separate offense. Each day that such violation continues to exist shall constitute a separate offense. In addition to any other penalties allowed by law, the court, as part of the sentence may prohibit the offender from owning, possessing, or having on the offender's premises in City of Commerce any animal during the term of the sentence, may order for the animal to be removed from the city or humanely euthanized, and may order restitution.

(Ord. No. 2019-009, 7-15-19)

Section 10-5. Running at large prohibited.

It shall be unlawful for the owner of any animal to allow it to run at large unattended on or about the streets and highways of the incorporated limits of the city or upon the property of another without the property owner's consent. Any such animal at large shall be impounded by an animal control officer as provided in this article.

(Ord. No. 2019-009, 7-15-19)

Section 10-6. Duty to keep animal under restraint—While off property.

(a) It shall be the duty of the owner of any animal to keep the animal under control at all times while the animal is off the real property limits of the owner. For the purposes of this section, an animal is deemed under control when it is confined within a vehicle, parked or in motion, is seemed by a leash or other device held by a competent person, or is properly confined within an enclosure with permission of the owner of the property where the enclosure is located.

(b) Any animal kept in the back of an open pickup truck or convertible car must be restrained by a leash. Such leash must be of the size and length to restrict the animal within the confines of the car or bed of the truck and to prohibit the animal from jumping out or over the sides or back of such vehicle.

(Ord. No. 2019-009, 7-15-19)

Section 10-7. Duty to keep animal under restraint—While on property.

(a) It shall be the duty of every owner of any animal to ensure that it is confined by way of a fence or other enclosure or is restrained by leash or, in some other physical manner, under the control of a competent person and obedient to that person's commands so that it cannot wander off the real property limits of the owner, it being the intent of this article that all animals be prevented from leaving, while unattended, the real property limits of their owners.

(b) In addition, all male and female dogs and cats that have not been spayed or neutered must be securely confined in such a way that they not only cannot get out to run loose, but also cannot be reached by other dogs or cats.

(c) It shall be unlawful for any owner or possessor of any dog to fail to keep the dog under restraint or control as provided for in this section.

(d) A dog is considered not under restraint or control when it is running at large, whether wearing a collar and tag or not. Reasonable care and precautions shall be taken to prevent the dog from leaving the real properly limits of its owner, possessor, or custodian, and to ensure that:

  (1) It is securely and humanely enclosed within a house, building, fence, pen or other proper enclosure out of which it cannot climb, dig, jump, or otherwise escape on its own volition, and that such enclosure is securely located at any time the animal is left unattended; or

  (2) It is securely and humanely restrained by an invisible containment system. If using an invisible containment system, a sign must be posted on the property indicating that the system is in place; or

  (3) It is on a leash and under the control of a competent person, or it is off leash and obedient to and under voice command of a competent person who is in the immediate proximity of the dog any time it is not restrained as provided for in subsection (1) or (2) above while on the owner's property.

(e) It shall be unlawful to tether an animal outdoors, except when all of the following conditions are met:

(1) The owner or adult custodian of the animal must be outside with the animal and the animal must be visible to the owner, except that an animal may be tethered outdoors unattended not more than one hour in any 24-hour period. No animal may be tethered unattended between the hours of 10:00 p.m. and 6:00 a.m.;

(2) Only one animal may be attached to each tethering system;

(3) Any tethering device used to tether an animal must be at least ten feet in length and shall not allow the animal to come within five feet of the edge of the property line of the property upon which such animal is tethered;

(4) Tethers must be made of a substance which cannot be chewed by the animal and shall not weigh more than five percent of the body weight of the animal;

(5) The tether must have a swivel installed at each end and be attached to a stationary object that cannot be moved by the animal;

(6) The tether must be at least ten feet in length and mounted no more than seven feet above the ground level;

(7) The length of the tether from the running cable line or trolley system to the animal's collar should allow access to the maximum available exercise area and allow the animal free access to food, water, and shelter;

(8) The animal must be attached to the tether by a properly fitted harness or collar with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for the purpose of tethering an animal;

(9) The tethering system must be a sufficient distance from any other objects or animals to prohibit the tangling of the cable, to prohibit the cable from extending over an object or an edge that could result in injury or strangulation of the animal and be of sufficient distance from any fence so as to prohibit the animal from having access to the fence;

(10) The animal is not outside during extreme weather, including, but not limited to, extreme heat or near freezing temperatures, or thunderstorms;

(11) The animal is at least six months of age; and

(12) The animal is not sick or injured.

(Ord. No. 2019-009, 7-15-19)

Section 10-8. Vicious animals.

The following additional precautions shall be taken by the owners, possessors, or custodians of vicious animals:

(a) It shall be unlawful for any person to cause, permit, accompany or be responsible for the presence of any vicious dog or cat on the streets or public places of the city or allow the animal to run on the premises of another at any time, unless and in addition to the other requirements of this article such dog or cat shall be securely muzzled to effectively prevent it from biting any person or other animal. A vicious animal shall be immediately confiscated by an animal control or law enforcement officer if the vicious animal is not maintained in a proper enclosure; or if the vicious animal is outside a proper enclosure in violation of this article.

(1) Owners of vicious dogs who maintain their dogs out-of-doors shall fence a portion of their property with a second perimeter or area fence. Within this perimeter or area fence, the vicious animal must be humanely confined inside a pen or kennel of adequate size. The pen or kennel

may not share common fencing with the area or perimeter fence. The kennel or pen must have secure sides and a secure top attached to all sides. The sides must either be buried two feet into the ground or sunken into a concrete pad. The gate to the kennel shall be inward-opening and shall be kept locked except when tending to the animal's needs such as cleaning the kennel or providing food and water.

(2) Whenever the dog is outside of its enclosure as provided for in this subsection, but on the owner's property, it must be attended by the owner and restrained by a secure collar and leash of sufficient strength to prevent escape. The leash shall be no longer than ten feet and the animal must be kept at least 15 feet within the perimeter boundaries of the property unless the perimeter boundary is securely fenced.

(3) Maintain at all times either a policy of insurance or surely bond in a minimum amount of $1,000,000.00 to cover claims for any personal injuries inflicted by the dog, which policy or surety bond shall be issued by an insurer or surety, as the case may be, authorized to transact business in this state.

(4) Any enforcement officer of the Commerce Police Department shall have the authority to enter onto private or public property for the purpose of ensuring compliance with the provisions of this section.

Any animal that has been confiscated under the provisions of this article shall be returned to its owner upon the owner's compliance with the provisions of this article and upon the payment of reasonable confiscation costs. In the event the owner has not complied with the provisions of this article within 20 days of the date the dog was confiscated, said dog shall be destroyed in an expeditious and humane manner.

(Ord. No. 2019-009, 7-15-19)

Section 10-9. Commercial guard/security dogs.

(a) It shall be the duty of all persons who keep, use or maintain any guard/security dog to have signs conspicuously posted on the premises where the guard/security dog is located to warn of the presence of the dog. This warning shall consist of a warning sign placed at each entrance and exit to the premises and in a position to be legible from the sidewalk or ground level adjacent to the sign (eye level). If the premises are not enclosed by a wall or fence, a sign shall be placed at every entrance and exit to each structure on the premises in which a guard/security dog is located. Each sign shall measure at least ten inches by 14 inches and shall contain block lettering stating "Warning, Guard Dog on Duty." In addition, for dogs rented or leased, the sign shall set forth the name, address and phone number of the responsible person to be notified during any hour of the day or night.

(1) Owners or custodians of any guard or protection dog confined within a perimeter fence must meet the following conditions:

(2) The fence shall be sufficient to prevent the dog's escape, with all points of ingress and egress securely locked at all times.

(3) A "beware of dog" sign shall be conspicuously displayed on each exterior side of the enclosure for each 50 feet of enclosure, minimum of two, as well as a sign on each ingress or egress point to the enclosure. Signs shall be a minimum of ten inches high and 14 inches long.

(b) It shall be the duty of all persons who keep, use or maintain a guard/security dog to ensure the dog is vaccinated against rabies and licensed as required by the laws and ordinances of the city and the state. The dog also must have the current vaccination tag affixed to a collar worn by the dog at all times as required by the laws and ordinances of the city and the state.

(c) It shall be the duty of any person that sells, leases and/or rents any guard/security dog to be used within the city to notify the city animal control office of the location and number of guard/security dogs in use, kept or maintained at a particular location. The animal control office shall maintain a record of the location, number of guard/security dogs, and current rabies vaccination and licensure of all guard/security dogs utilized within the city. The person that sells, leases and/or rents a guard/security dog to be used in the city shall furnish the following information to the city animal control office:

(1) Name, address and telephone number of the location where a guard dog is located.

(2) Name, breed, sex and current license tag information of each guard dog at any location in the city.

(d) It shall be unlawful to transport any guard/security dog in an open bed truck, and the vehicle transporting guard dogs shall be identified as to the business owner. It shall be unlawful to transport any guard dog in the city except under the following conditions:

(1) Each dog shall be placed in separate holding bins.

(2) Each holding bin shall be enclosed and measure 48 inches long by 18 inches wide by 30 inches high.

(3) Each holding bin will be adequately ventilated.

(4) No guard/security dog shall be chained, tethered or otherwise tied to any inanimate object such as a tree, post or building, outside of its own enclosure.

(e) A guard or protection dog shall be deemed under control only when restrained by the collar provided for in this section and a secure leash not to exceed six feet in length. The leash shall be of sufficient strength to prevent escape.

(f) Dogs found running at-large or in violation of this section may be immediately impounded by officers of the animal control unit or any police officer. The officers may pursue the dog onto private property to effect capture of such dog.

(g) It is unlawful to train a guard or protection dog, unless the trainer holds a state kennel license, a city business license, and maintains at all times either a policy of insurance or a surety bond in a minimum amount of $1,000,000.00 to cover claims for any personal injuries inflicted by the dog or dogs being trained, which policy or surety bond shall be issued by an insurer or surety, as the case may be, authorized to transact business in this state. It is unlawful to train a guard or protection dog on public property, including, but not limited to, public parks.

(Ord. No. 2019-009, 7-15-19)

Section 10-10. Abandoned animals.

It shall be unlawful for anyone to knowingly abandon any domesticated animal within the city. Each person who does abandon, knowingly or willingly permits such abandonment, or aids in the abandonment of any domesticated animal shall be in violation of the law and shall be punished as provided in this article.

(Ord. No. 2019-009, 7-15-19)

Section 10-11. Cruelty to animals.

No person shall, by act, omission or neglect, cause unjustifiable physical pain, suffering or death to any animal. It shall be unlawful for anyone to allow or promote the fighting between animals.

This section shall not apply to the killing of animals raised for the purpose of providing food, nor does it apply to any person who shall hunt wild animals in compliance with the game and fish laws of the state. Furthermore,

this section shall not apply licensed veterinarians who perform surgery or euthanasia and animal control officers who euthanize animals under the direction of animal control per the guidelines of the Georgia Veterinary Medical Association, Georgia Department of Agriculture.

(Ord. No. 2019-009, 7-15-19)

Section 10-12. Public nuisance animal.

A public nuisance animal shall mean and include any animal that:

(1) Is repeatedly found at-large; or

(2) Damages the property of anyone other than the owner; or

(3) Is vicious; and for the purpose of this section an animal shall be considered vicious if it attacks without provocation any human being or other domesticated animals;

(4) Creates unsanitary conditions or offensive and objectionable odors in enclosures or surroundings and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept; or

(5) An animal which is not being kept in conformity with city zoning resolutions; or

(6) Is in heat and not confined within a secure enclosure to prevent unintentional breeding;

(7) Chases vehicles, bicycles, or people;

(8) It shall be a violation of this article for an owner or an individual in possession of the property upon which the animal or animals are located at the time of the offense to allow the animal or animals to make any vocalizations which are plainly audible to a person of ordinary hearing ability under the following conditions:

   a. The animal or animals is making such vocalizations for more than 15 minutes without interruption or more than 30 minutes if the vocalization is intermittent.

   b. These time limits do not apply if the vocalizations are given as a warning to the presence of an intruder.

   c. Officers enforcing this subsection are not required to measure the vocalizations with the use of a sound level meter.

   d. The owner or individual in possession of the property upon which the animal or animals are located shall be given a written notice indicating that such animal or animals are creating a disturbance and advising the owner or individual in possession of the property of some possible solutions to rectify the nuisance.

   e. If the disturbance is not resolved within ten days and the animal control unit receives a second complaint from the original complainant, owner or individual in possession of the property may be issued a citation in accordance with the requirements of this article.

Any such public nuisance animal may be impounded and the owner or possessor of the animal charged for a violation of this article.

(Ord. No. 2019-009, 7-15-19)

Section 10-13. Disposition of impounded animals.

(a) Any animal, seized or impounded by an animal control officer, or any officer empowered to act by law shall be detained at the Jackson County Animal Control Facility. The Commerce Animal Control Officer shall notify by mail, in person, or through a written notice the owner of such animal, if known or can be reasonably ascertained, that the animal has been impounded. The owner of any animal impounded may reclaim the animal from the Jackson Animal Control Facility by the payment of an impoundment fee plus a boarding fee for each day the animal was impounded; and the cost of rabies vaccination if the animal has not been vaccinated within the prescribed time period. These fees, as applicable, shall also apply to biting animals held for rabies observation at the animal control facility.

(1) All periods specified in this section shall be deemed to commence at 12:01 a.m. of the day following the day of impound or confinement.

(2) Other animals confiscated or confined shall be kept at the county animal control facilities for a period of not less than five business days unless redeemed within such period.

(3) All dogs impounded or confiscated shall be kept at county animal control facilities for a period of not less than ten calendar days unless redeemed within such period.

(4) All animals confiscated or impounded for observation shall be kept at the county animal control facilities for a period of not less than ten calendar days unless transferred to a licensed veterinarian or allowed to remain in strict confinement on the premises of the owner.

(b) Any animal that is impounded for law enforcement purposes may, at the owner's request and expense, be impounded at a veterinary or licensed kennel of the owner's choosing. The owner may not cause the animal to be released from the boarding facility without the approval of the prosecuting officer or agent.

(c) The animal control officer or police officer at his discretion may not impound the animal or livestock found in violation of any section of this chapter, but may return the animal to its owner or possessor.

(Ord. No. 2019-009, 7-15-19)

Section 10-14. Humane disposition.

The Jackson County Animal Control Facilities will determine the status of the animal and its eligibility for adoption.

(Ord. No. 2019-009, 7-15-19)

Section 10-15. Biting animals and quarantine.

(a) All dogs and cats known to have bitten or scratched a person shall be confined to the anima l control facility, veterinarian's hospital, or at a boarding facility approved by the animal control officer or under home supervision with the approval of the animal control officer for a period of ten days. All expenses incurred for boarding the animal during this period of time shall be paid by the owner or possessor of the biting animal.

(b) In accordance with the rules and regulations promulgated by the state department of public health, all pets or wild animals, other than a dog or cat, known to have bitten a person, or any animal which cannot be held for a rabies observation period, shall be euthanized and a lab specimen of brain tissue sent to the state department of epidemiology for testing and control of rabies.

(c) Unvaccinated or unwanted animals bitten or scratched by a known potentially rabid animal shall be euthanized immediately. If the owner of the unvaccinated animal is unwilling to have the animal euthanized,

upon approval of the animal control unit, the exposed animal shall be placed in quarantine for six months and vaccinated one month prior to being released. The owner or possessor is responsible for quarantining the exposed unvaccinated animal in strict compliance with the policies and procedures of the animal control unit.

(d) Dogs and cats that are bitten or scratched by a known or potentially rabid animal that are current on their vaccinations shall be re-vaccinated immediately, confined, and observed for 45 days. Confinement must be coordinated with and approved by the animal control unit.

(e) For purposes of subsections (c) and (d), any animal bitten or scratched by a bat or wild carnivorous mammal including, but not limited to, bobcats, raccoons, foxes, skunks, or coyotes, which are not available for testing, should be considered exposed to rabies.

(f) Failure to comply with the quarantine and/or confinement requirements of this section constitutes a violation of this section and may result in the impoundment of the animal. In that event, the owner or possessor remains responsible for all veterinary, boarding, and other expenses incurred on behalf of the quarantined animal.

(Ord. No. 2019-009, 7-15-19)

Section 10-16. Wildlife.

All complaints and matters concerning wild animals not of a domestic nature and complaints involving game animals or protected species and/or hunting, shall be forwarded to the Georgia Department of Natural Resources, Game and Fish Division or the U.S. Department of Agriculture, Law Enforcement Division for proper disposition, i.e., compliance, apprehension, control and/or enforcement as may be necessary as provided by state and federal rules and regulations.

(Ord. No. 2019-009, 7-15-19)

Section 10-17. Dead animals.

Officers of the animal control unit are authorized to remove dead animals from public property including public schools, parks and roadways. Carcasses on private property must be disposed of by the property owner or possessor in accordance with state laws and regulations. It shall be unlawful for any person to dispose of a dead animal, its parts, or blood on the land of another without the permission of the owner of the land. It shall be unlawful for any person to dispose of a dead animal in a well or open pit of any kind, on private or public land. All dead livestock, including horses, cattle and any other large animal must be disposed of by the animal owner or property owner/possessor in accordance with state and local regulations.

(Ord. No. 2019-009, 7-15-19)

Section 10-18. Summons/citation.

(a) An animal control officer may issue or cause to be issued a citation directing the owner or possessor of the animal to appear before the municipal court on a certain day to stand trial for the violation of this article.

(b) If a violation of this article has not been personally witnessed by the animal control officer or his authorized representative or other employee of the city, a subpoena may be issued to the complainant, witness, victim to appear or the production of evidence on the day and time set for trial to testify on behalf of the city.

(Ord. No. 2019-009, 7-15-19)

Section 10-19. Liability of the city, animal control unit, officers and employees.

The City of Commerce, the animal control unit and its officers and employees shall not be held responsible or liable for any accidents, diseases, injuries, or deaths to any animal while being impounded or boarded at the animal control facility or any facility designated by the animal control unit to house such animal.

(Ord. No. 2019-009, 7-15-19)

Section 10-20. Interference with animal control officers.

It shall be unlawful to interfere with any animal control officer or other officer empowered to act by law, or to take or attempt to take any animal from the city vehicle used to transport the animal, or to take or attempt to take any animal from the animal control facility, or by any other method which would block or hinder any officer referred to in this section from performing his duties.

(Ord. No. 2019-009, 7-15-19)

Section 10-21. Animal neglect.

It shall be the duty of every owner or custodian of any animal to exercise reasonable care and take all necessary steps and precautions to protect other people, property, and animals from injuries or damage which might result from their animal's behavior. If the owner or custodian of any animal is a minor, the parent or guardian of such minor shall be responsible to ensure compliance with all provisions of this article.

(a) Any animal or livestock owner or possessor who fails to provide adequate drink, adequate food, adequate space, adequate shelter, sanitary conditions, necessary veterinary care, and/or who causes unnecessary suffering of any animal or livestock shall be deemed in violation of this section and such animal shall be deemed neglected.

(b) It shall be unlawful to leave animals unattended in a parked vehicle without proper ventilation to prevent the animal from suffering physical distress from heat exhaustion and such violation shall be deemed neglected.

(c) Any animal control officer or other officer empowered to act by law may impound any animal found to be neglected, as defined by this section.

(d) It shall be unlawful for any person to collect animals and fail to provide them with humane/adequate care, collect dead animals that are not properly preserved or disposed of as required by this article, or collect, house, or harbor animals in filthy, unsanitary conditions that constitute a health hazard to the animals being kept, and/or to the animals or residents of adjacent property.

(Ord. No. 2019-009, 7-15-19)

Section 10-22. Animals in vehicle.

A law enforcement officer may use any force necessary to remove any animal locked in a closed vehicle when the ambient temperature is 80 degrees Fahrenheit or above outside the vehicle. If the vehicle is damaged during such removal, the law enforcement officer shall not be liable for any damage to the vehicle.

(Ord. No. 2019-009, 7-15-19)

Section 10-23. Animals transported in vehicles.

No animal shall be transported on a public road in an open vehicle including an open top vehicle or open truck bed unless the animal is humanely secured so as to prevent the animal from escaping out of the vehicle, getting tangled, or having the ability to extend over the edge of the vehicle that could result in an injury or strangulation of the animal while the vehicle is in motion. No animal shall be transported in the trunk of a vehicle or under a pick up truck's bed cover.

(Ord. No. 2019-009, 7-15-19)

Section 10-24. Limitation on ownership.

(a) Any person who has been convicted of cruelty, neglect, abandonment or hoarding of an animal as provided in this Code or has been required to or voluntarily relinquished ownership of such animal, may not own, possess, or have on his premises in the City of Commerce any animal for one year from the date of conviction. A nolo contendere plea is considered a conviction for the purpose of this section. Nothing in this section shall prohibit the court from imposing a greater length of time.

(b) Any person who has been convicted of failure to keep an animal under restraint while on the owner's property as provided in this Code and has been required to provide additional confinement requirements and has not complied with the court's order, may not be allowed to own a pet in their City of Commerce household for one year from the date of conviction.

(Ord. No. 2019-009, 7-15-19)

Section 10-25. Animal breeders.

It is unlawful for any person who does not hold a license from the Georgia Department of Agriculture to breed an animal if they are required by the Georgia Department of Agriculture to be licensed.

(Ord. No. 2019-009, 7-15-19)

Section 10-26. Dangerous dog or dangerous animal.

No dog shall be classified as a dangerous dog or dangerous animal as a result of an injury upon a human being inflicted at a time when the dog or animal was being used by a law enforcement officer to carry out the law enforcement officer's official duties. No animal shall be considered a dangerous dog or dangerous animal as a result of an injury inflicted by the animal upon a person who, at the time of injury, was committing a willful trespass or other tort; who was tormenting, abusing or assaulting the dog or animal and had done so in the past; or who was attempting to commit a crime. If the person injured is a child of tender years, the age, understanding, and capacity of such child shall be considered to determine whether such child was capable of committing a willful trespass or other tort or a crime.

(a) When an animal control officer classifies any dog as a dangerous dog or a potentially dangerous animal under this article, the animal control officer shall notify the owner of such classification. The notice to the owner shall meet the following requirements:

    (1) The notice shall be in writing and mailed by certified mail or hand delivered to the owner's last known address. If an animal has more than one owner, notice to one owner shall be sufficient for purposes of this article. If there is a question as to the animal's ownership, notice shall be deemed sufficient if sent to the last person who received a citation for the animal or who obtained a license for the animal.

(2) The notice shall include a summary of the animal control officer's findings that form the basis for the animal's classification as a dangerous animal.

(3) The notice shall be dated and shall state that the owner has a right to request a hearing on the classification within 15 days from the date of the notice.

(4) The notice shall state that the chief of police or his designee shall conduct the hearing.

(5) The notice shall state that if the owner does not request such a hearing within 15 days from the date of the notice, the classification of the animal as a dangerous animal shall be final and conclusive for all purposes.

(6) The notice shall include a form to request a hearing before the chief of police or his designee and shall provide specific instructions on mailing or delivering such a request.

(b) When the chief of police or their designee receives a request for a hearing from an owner, he shall schedule such a hearing within 30 days of receipt of the request. The chief of police or their designee shall notify the owner in writing and mailed by certified mail or hand delivered. The notification will include the date, time and place of the hearing; such notice shall be made to the owner at least ten days prior to the date of the hearing. At the hearing, the owner shall be given the opportunity to testify and to present evidence. The chief of police or their designee shall also receive such other evidence and hear such other testimony as he may find reasonably necessary to make a determination either to sustain, modify or overrule the classification of the animal by the animal control officer. Within ten days of the date of the hearing, the chief of police or their designee shall notify the owner in writing by certified mail or hand deliver their determination on the matter. If the determination is made that the animal is a dangerous dog or potentially dangerous animal, the notice shall specify the date upon which that determination is effective. Unless the chief of police or their designee determines that a later date is appropriate in a particular case, the effective date of the determination shall be the date of the animal control officer's classification.

(c) If the identity of the owner of an animal which the animal control officer has classified as a dangerous dog or dangerous animal cannot be determined, the animal shall be immediately confiscated. If the animal's owner claims such an animal, the animal shall be released to its owner, together with a copy of the notice specified in subsection (a) of this section. If the animal remains unclaimed for seven days, the animal shall be turned over to Jackson County Animal Control to be destroyed in an expeditious and humane manner. Under no circumstances shall such animal be placed for adoption.

(Ord. No. 2019-009, 7-15-19)

Section 10-27. Requirements for possession of dangerous or potentially dangerous animal.

(a) Any owner of a dangerous or potentially dangerous animal shall be jointly and severally responsible with all other owners of such animal for compliance with the requirements of this section.

(b) No person shall own, possess, keep, harbor, or have custody or control of a dangerous dog or dangerous animal except in compliance with all of the following requirements:

(1) A dangerous dog or dangerous animal shall not be permitted to remain in the city unless it is properly registered with the animal control unit on a form provided by the animal control unit.

(2) Except under the circumstances otherwise specifically permitted by this article, a dangerous dog or dangerous animal shall at all times be maintained inside a proper enclosure.

(3) The premises where a dangerous dog or dangerous animal are kept shall be posted with a clearly visible sign warning that there is an animal on the premises which presents a danger to human beings.

Such sign shall include a symbol sufficient to convey without words the message that there is an animal on the premises which presents a danger to human beings.

(4) The owner of a dangerous animal shall maintain at all times either a policy of insurance or a surety bond in a minimum amount of $1,000,000.00 to cover claims for any personal injuries inflicted by the animal, which policy or surety bond shall be issued by an insurer or surety, as the case may be, authorized to transact business in this state.

(5) The animal control officer or his designee shall have the right to inspect randomly and without notice a dangerous dog or dangerous animal which is required to be confined pursuant to this section. Permission of the owner or person in custody of the dangerous or dangerous animal shall not be unreasonably withheld.

(6) The owner of a dangerous dog or dangerous animal at his/her own expense, and provide the registration number to the animal control unit. The owner shall keep the registration information updated.

(c) The owner of a dangerous dog or dangerous animal shall notify the animal control officer in person or by telephone within 24 hours of the occurrence of any one of the following events:

(1) The animal has escaped or has otherwise ceased to be in the custody of the owner for any reason, unless the owner knows such dog to be physically secured and restrained or confined in the custody of another competent adult.

(2) Such animal has attacked a human being or other animal.

(3) Such animal has been sold, given, or otherwise transferred to the ownership or possession of another person.

(4) The animal has died.

(5) The animal is leaving the City of Commerce.

(d) It shall be unlawful for the owner of a dangerous animal to permit the animal to be outside a proper enclosure unless the dangerous animal has been properly restrained.

(e) It shall be unlawful for any person to cause, permit, accompany or be responsible for the presence of any dangerous dog or animal on the streets or public places of the city or allow the animal to run on the premises of another at any time, unless and in addition to the other requirements of this article such dog or cat shall be securely muzzled to effectively prevent it from biting any person or other animal.

(Ord. No. 2019-009, 7-15-19)

Section 10-28. Confiscation of a dangerous dog or dangerous animal.

(a) If an animal control officer or police officer has probable cause to believe that a dangerous dog or dangerous animal is being harbored in violation of this article, such officer or agent may do one of the following:

(1) A dangerous animal shall be immediately confiscated by an animal control or law enforcement officer if the dangerous animal is not maintained in a proper enclosure; or if the dangerous animal is outside a proper enclosure in violation of this article. Upon impounding a dangerous animal for any reason, the animal control unit may for reasons of public safety, retain the animal at the impoundment facility until disposition by the appropriate court;

(2) Order the violation immediately corrected and cite the owner of the animal to appear in court for the violation; or

(3) If the violation cannot be immediately corrected and the animal is posing an imminent, serious threat to human beings or other domestic animals, the animal may be seized and impounded, in which case the owner will be cited to appear in court for the violation. At the owner's request and expense, such impoundment may be at a veterinarian or licensed kennel of the owner's choosing. If the animal is later deemed not dangerous or potentially dangerous under this article, it will be released to the owner. However, if the animal is deemed dangerous or potentially dangerous pursuant to this article, it will be released to the owner after payment of any fees and penalties, and upon presentation of proof that the owner has satisfied the requirement s set forth in set forth in section 10-32.

(b) Any animal that has been deemed a dangerous animal shall be immediately confiscated by the animal control officer upon the determination that one of the following circumstances exists:

(1) The owner of the animal does not have the proper liability insurance or bond required by section 10-32.

(2) The animal is not validly and currently registered as required by section 10-32.

(3) The animal is not maintained in a proper enclosure.

(4) The animal is outside a proper enclosure but not under the restraints required by section 10-32 whether or not such animal is then in the custody or possession of its owner.

(c) Any animal which has been confiscated under subsections (a) or (b) shall be returned to its owner upon the owner's compliance with the provisions of this article and upon the payment of expenses accrued by the Jackson County Animal Control Facility. If the owner has not complied with the provisions of this article and paid such expenses within 20 days of the date of confiscation, the animal shall be destroyed in an expeditious and humane manner.

(Ord. No. 2019-009, 7-15-19)

Section 10-29. Keeping of numerous dogs and cats in the city.

The keeping of an unlimited number of dogs and cats in the city for a considerable period of time detracts from and, in many instances, is detrimental to the healthful and comfortable life for which such areas were created. The keeping of an unlimited number of dogs and cats is, therefore, declared to be a public nuisance. As used in this section:

(1) *Dog* means any canine, regardless of age or sex.

(2) *Cat* means any feline, regardless of age or sex.

(Ord. No. 2019-009, 7-15-19)

Section 10-30. Kennels.

All kennels shall, in addition to the other requirements of this chapter, comply with the minimum standards of this section. Failure to meet these standards shall be grounds for denial of a permit or revocation of a permit. Standards for kennels are as follows:

(a) In the areas where kennels are permitted, no kennel shall be located closer than 100 feet to the boundary of the nearest adjacent residential lot.

(b) Enclosures must be provided which shall allow adequate protection against weather extremes. Floors of buildings, runs and walls shall be of an impervious material to permit proper cleaning and disinfecting.

(c) Building temperature shall be maintained at a comfortable level. Adequate ventilation shall be maintained.

(d) Each animal shall have sufficient space to stand up, lie down and turn around without touching the sides or top of cages.

(e) Cages are to be of material and construction that permit cleaning and sanitizing.

(f) Cage floors shall be of concrete, unless radiantly heated, and shall have a resting board or some type of bedding.

(g) Runs shall provide an adequate exercise area and protection from the weather. Runs shall have an impervious surface.

(h) All animal quarters and runs are to be kept clean, dry and in a sanitary condition.

(i) The food shall be free from contamination, and shall be wholesome, palatable and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.

(i) All animals shall have fresh water available at all times.

(Ord. No. 2019-009, 7-15-19)

Chapter 14 BUILDINGS AND BUILDING REGULATIONS[11]

ARTICLE I. IN GENERAL

Section 14-1. Technical building and construction codes adopted.

(a) The following codes and appendixes of said codes, including the latest edition as adopted and amended by the Georgia Department of Community Affairs, are adopted by reference as though they were copied herein fully by the City of Commerce, Georgia, and shall be enforced:

International Building Code, 2006 Edition

International Fuel Gas Code, 2006 Edition

International Mechanical Code, 2006 Edition

International Plumbing Code, 2006 Edition

(ANSI) American National Standards Institute, Inc. A117.1—1986 Edition

(SBCCI) Standard Unsafe Building Abatement Code

(SBCCI) Standard Housing Code

(SBCCI) Standard Swimming Pool Code

(SBCCI) Standard Amusement Device Code — Appendix A

(SBCCI) Standard Existing Building Code

International Fire Code, 2006 Edition

International Residential Code, 2006 Edition

International Energy Conservation Code, 2000 Edition

National Electric Code, 2005 Edition

2006 International Property Maintenance Code

(b) The codes set forth in subsection (a) above are hereby amended to provide as follows: A person who shall violate a provision of this code or fails to comply therewith or with any of the requirements thereof, upon conviction thereof in the Municipal Court, shall be punished as provided in Section 1-12 of the Code of the

[11]Cross reference(s)—Businesses, ch. 18; environment, ch. 30; fire prevention and protection, ch. 34; floods, ch. 38; offenses and miscellaneous provisions, ch. 46; solid waste, ch. 58; streets, sidewalks and other public places, ch. 62; utilities, ch. 78.

State law reference(s)—Authority of city or county to provide codes, including building, housing, plumbing and electrical codes, Ga. Const. art. 9, Section 2, par. 3(12); adoption and continuation of state minimum standard codes, O.C.G.A. § 8-2-21; statewide application of minimum standard codes, codes requiring adoption by municipality or county, O.C.G.A. § 8-2-25; enforcement of codes, O.C.G.A. § 8-2-26; providing of fire escapes by building owners, O.C.G.A. § 8-2-50; access to and use of public facilities by physically handicapped persons, O.C.G.A. § 30-3-1 et seq.; authority to repair, close or demolish unfit buildings or structures, O.C.G.A. § 41-2-7.

City of Commerce, Georgia. Where any offense continues from day to day, each day's continuance thereof shall be deemed a separate offense.

(c) In the codes adopted in subsection (a) above, blank spaces shall be filled in as follows:

Notation	Wording in Blank Spaces
Title	Building and Code Official
Name of City or Town	City of Commerce, Georgia
City or County Attorney	City Attorney

(Ord. No. 95-03, 3-28-95; Ord. No. 95-09, 8-14-95; Ord. No. 2007-003, 1-8-07; Ord. No. 2010-008, 6-14-10)

Charter reference(s)—Codes, § 2.24.

Section 14-2. Building and code department created; references in Code.

(a) There shall be a building and code department created and established for the purpose of administration and enforcement of all codes of the city pursuant to this Chapter and Chapter 30, Article II and Article IV; Chapter 38; Chapter 62; Chapter 66; Chapter 78 and the Zoning Ordinance of the City of Commerce, Georgia.

(b) Any existing reference in the Code of the City of Commerce or the zoning ordinance to a building inspector, building official, code enforcement officer or similar reference shall mean the building and code official of the City of Commerce appointed by the city.

(Ord. No. 95-03, 3-28-95)

Section 14-3. Boundaries of city fire district.

The boundaries of the city fire district for the purposes of this chapter shall be the same area and boundaries as described in the City of Commerce Zoning Ordinance as the Central Business District Zone.

(Ord. No. 95-03, 3-28-95)

Section 14-4. Construction board of adjustment and appeals.

There is hereby established a board to be called the construction board of adjustment and appeals which shall consist of the City of Commerce Planning Commission members. The powers and procedures for the board shall be as set forth by the International Building Code as amended.

(Ord. No. 95-09, 8-14-95; Ord. No. 2019-030, 11-17-19)

Section 14-5. Building code fees.

(a) *Fees; construction or alteration.*

(1) The permit fee for the construction of new residential structures shall be based on square footage as follow: the minimum fee shall be $200.00, heated area shall be $0.12 per square foot, unheated area shall be $0.05 per square foot.

(2) The permit fee for alterations of residential structures shall be as follows: heated area shall be $0.05 per square foot and unheated area shall be $0.03 per square foot.

(3) The permit fee for moving of a residential structure from one location to another shall be $100.00.

(4) The permit fee for the construction or alteration of commercial or industrial structures shall be as follows: the minimum fee shall be $50.00; heated area up to 500,000 square feet shall be $0.15 per square foot; heated area over 500,000 square feet shall be $0.08 per square foot; unheated area up to 500,000 square feet shall be $0.15 per square foot; unheated area over 500,000 [square feet] shall be $0.08 per square foot.

(b) *Mobile homes, factory built homes and relocated site built homes.*

(1) Mobile homes and manufactured homes shall be charged a permit fee of $200.00; installers shall be charged a permit fee of $50.00 per home; occupancy permits shall be $100.00 per home;

(2) An existing mobile home requiring a site inspection will be charged a fee of $15.00 for mobile home site check;

(3) Site-built homes being moved from one foundation to another will be charged a fee of $50.00 for inspection before being moved to another location within the City of Commerce; the occupancy permit shall be $100.00;

(4) There will be a $0.20 per mile charge for travel outside of the county for the purpose of such inspection.

(c) *Reinspection fees.* When the owner or contractor calls for an inspection and the inspector finds that the work is not ready for inspection, a reinspection fee of $25.00 will be assessed. All reinspection fees shall be paid prior to final inspection.

(d) *Square footage defined.* The term "square footage" as used in this section means the square feet of floor area, enclosed or open area, for each separate floor or level including basements, canopies, carports, porches and other area under a roof. A separate building permit shall be issued for each separate structure.

(e) *Penalty where permits not applied for within certain time.* There shall be a penalty of the greater of $25.00 or double the price of the permit, if the permit is not applied for within 48 hours of the beginning of work.

(f) *Occupancy.* No residential, commercial or industrial building shall be occupied in the City of Commerce until all construction is complete and final inspection has been made by the building inspection department, and final approval given.

(1) Occupancy permits for residential stick built homes, mobile homes or other residential sites requiring an occupancy permit shall be charged a fee of $100.00;

(2) Occupancy permits for commercial, industrial buildings and new construction or businesses changing company names that require an occupancy permit, but do not require a site inspection shall be charged a fee of $200.00;

(3) Occupancy permits for existing buildings requiring a site inspection and review for a change in use of the building shall be charged a fee of $35.00;

(4) Occupancy permits for a residential structure that has moved from one location to another location shall be charged a fee of $150.00.

(g) *Governmental exemptions.* Any governmental building shall be exempt from payment of any fee, however, application for inspection services is required.

(h) *Fees; new plan review.*

(1) Buildings up to 50,000 square feet	$250.00
Buildings from 50,001 square feet to 100,000 square feet	400.00
Buildings greater than 100,000 square feet	600.00
(2) Three stories or more (other than R3 occupancy which would be one- and two-family dwellings)	100.00
(3) All group assembly, educational, institutional, (R1 occupancy — hotels, motels, boarding houses) (R2 occupancy — apartment houses, fraternities, sororities, monasteries,convents, dormitories)	100.00
(4) All others	50.00

(i) *Fee; building code appeal.*

(1) Each appeal	$ 35.00

(Ord. No. 95-07, 8-14-95; Ord. No. 2006-015, 9-11-06)

Section 14-6. Electrical code fees.

(a) *Electrical permit fees.* The electrical fees shall be:

	Each
Service Fees:	
Minimum electrical permit fee	$ 15.00
Metered temporary service (each)	15.00
Permanent Service:	
Mobile home service	15.00

Other Permanent Service:

(1) *Residential service:* Minimum fee $40.00; up to 200 amperes $40.00; up to 300 amperes $50.00; up to 400 amperes $60.00; up to 500 amperes $70.00; above 500 amperes $80.00.

(2) *Commercial and industrial:* Minimum fee $50.00; up to 200 amperes $50.00; up to 300 amperes $60.00; up to 400 amperes $75.00; up to 500 amperes $85.00; up to 600 amperes $95.00. Three phase service up to 200 amperes $50.00; up to 400 amperes $70.00; up to 600 amperes $90.00; up to 800 amperes $110.00; up to 1,000 amperes $130.00; up to 1,200 amperes $150.00; up to 1,400 amperes $170.00; up to 1,600 amperes 190.00; up to amperes 1,800 $210.00; up to 2,000 amperes $230.00.

	Each

Fused Circuits (meter loops):	
110 volts, 20 amperes or less	$ 2.00
110 volts, more than 20 amperes (per ampere)	0.05
220 volts, 50 amperes or less	4.00
220 volts, more than 50 amperes (per ampere)	0.04
440 volts, 100 amperes or less	8.00
440 volts, more than 100 amperes (per ampere)	0.04
Circuits above 440 volts (per ampere)	0.03
Motors:	
1 H.P. or less	$ 1.50
1.1 — 5 H.P	3.00
5.1 — 10 H.P	4.50
10.1 — 20 H.P.	6.00
20.1 — 50 H.P.	7.50
50.1 H.P. and above (plus $0.05 per H.P. above50 H.P)	9.00
Transformers, Heaters and Appliances:	
1 K.W. or less	$ 2.00
1.1 — 4 K.W	4.00
4.1 — 10 K.W	6.00
10.1 — 25 K.W	8.00
25.1 K.W. and above (plus $.05 per K.W. above 25	10.00
Other Equipment:	
Swimming pool	$ 15.00
Flammable liquids dispensing pump	5.00
Other equipment will be charged at K.W. or H.Q. rate	

(b) *Penalty fee.* There shall be a penalty of the greater of $25.00, or double the price of the permit, if the permit is not applied for within 48 hours of the beginning of the job.

(c) *Reinspection fees.* When the owner or contractor calls for an inspection and the inspector finds that the work is not ready for inspection, a reinspection fee of $10.00 will be assessed. All reinspection fees shall be paid prior to final inspection of electrical work.

(Ord. No. 95-07, 8-14-95; Ord. No. 2006-015, 9-11-06)

Section 14-7. Plumbing code fees.

(a) *Permit issuing fee.* These fees shall include and be paid by any user of the City of Commerce's sanitary sewer system, within or without the corporate limits of the city.

(b) *Plumbing permit fee.*

Plumbing Permit Fee	Each
Minimum Plumbing Permit fee	$ 40.00
Water closet	4.00
Lavatory	4.00
Bath tub	4.00
Shower (not part of tub)	4.00
Sink	4.00
Dishwasher	4.00
Washing machine	4.00
Laundry tub	4.00
Water heater	4.00
Drinking fountain	4.00
Floor and area drain	4.00
Urinal	4.00
Bar sink	4.00
Sand trap	4.00
Grease trap/test station	10.00
Septic tank connection	10.00
City sewer tap	10.00
Gas piping	4.00

(c) *Penalty fee.* There shall be a penalty of the greater of $25.00, or double the price of the permit, if the permit is not applied for within 48 hours of the beginning of the job.

(d) *Reinspection fees.* When the owner or contractor calls for an inspection and the inspector finds that the work is not ready for inspection, a reinspection fee of $10.00 will be assessed. All reinspection fees shall be paid prior to final inspection of electrical work.

(Ord. No. 95-07, 8-14-95; Ord. No. 2006-015, 9-11-06)

Section 14-8. Gas code fees.

(a) *Permit fee schedule.*

(1) For issuing each permit a minimum fee of $20.00 will be charged.

(2) The total fees for inspection of a consumer's gas piping at one location (including both rough and final piping inspection) shall be $20.00 minimum, including one outlet, plus $4.00 per each additional outlet.

(3) The fees for inspecting conversion burners, floor furnaces, incinerators, boilers or central heating and air conditioning units shall be $20.00 for each unit.

(b) *Penalty fee.* There shall be a penalty of the greater of $25.00 or double the price of the permit, if the permit is not applied for within 48 hours of the beginning of work.

(c) *Reinspection fees.* When the owner or contractor calls for an inspection and the inspector finds that the work is not ready for inspection, a reinspection fee of $10.00 will be assessed. All reinspection fees shall be paid prior to final inspection of gas work.

(Ord. No. 95-07, 8-14-95)

Section 14-9. Heating, ventilating and air conditioning fees.

(a) *Mechanical permit fees.*

(b) *Definitions.* For the purpose of heating, ventilating and air conditioning permit fees, the following are defined:

(1) *In general.* Where terms are not defined in this section, they shall have their ordinarily accepted meanings or such as the context may imply.

(2) *Air conditioning equipment.* Air conditioning equipment shall mean refrigeration units used for comfort cooling and installed for central air conditioning systems or self contained air conditioning units.

(3) *Approved gas appliance.* Approved gas appliance means gas appliances tested, approved, listed and bearing the seal of approval of a nationally recognized testing agency.

(4) *Distribution system.* Distribution system shall mean a system designed and constructed for the purpose of conveying steam, water or air for heating, conditioning or process purposes.

(5) *Gas vent.* Gas vent means a vertical flue for removing products of combustion from approved gas appliances requiring a draft hood, but not suitable for other fuels.

(6) *Horsepower capacity of refrigeration units.* All references to horsepower capacity of refrigeration units shall be construed to mean the horsepower rating of the compressor motor only. Capacity of other than compressed units shall be based on the refrigeration tonnage rating of the unit at 40 degree evaporator and 105 degrees condensing temperature, or equivalent. One ton of refrigeration under these conditions shall be considered equal to one horsepower.

(7) *Mechanical firing equipment.* Mechanical firing equipment shall mean a device for feeding and burning of solid, liquid and gaseous fuels, such as gas and oil conversion burners and stoker.

(8) *Multifamily house.* Multifamily house means a building occupied as the home or residence of individuals, families or households living independently of each other, of which three or more are doing cooking within their apartments; including tenement house, apartment house or flat.

(c) *Schedule of permit fees.*

(1) *Boiler or furnace.* Permit fees for the installation of each boiler or furnace including distribution systems, when such distribution system is installed under same permit as boiler or furnace, shall be in accordance with Schedule (A) below.

(2) *Floor furnace, wall circulator, etc.* Permit fees for the installation of each floor furnace, wall circulator or heater, recessed wall circulator or heater, (vented circulating heater), direct fired unit heater, gas steam radiator, commercial, rotary dryer direct fired, blast furnace and annealing furnaces shall be in accordance with Schedule (A) below.

(3) *Replacement boiler or furnace.* Permit fees for the installation of each replacement boiler or furnace connected to existing system, or installed and connected to distribution system installed by others under separate permit and mechanical firing equipment, shall be in accordance with Schedule (A) below.

(4) *Distribution system.* Permit fees for the installation or replacement of distribution system connecting to existing boiler or furnaces, or the installation or replacement of distribution system installed and connected to boilers or furnaces installed by others under separate permit shall be in accordance with Schedule (A) below.

(5) *Refrigeration units.* Permit fees for the installation of each refrigeration unit including distribution system, condenser, receiver, cooling tower or evaporative condenser, coils and air handling unit shall

be in accordance with Schedule (B) below. Permit fees for the installation of separate refrigeration units or distribution systems installed under separate permits, including both new and replacement installations shall be in accordance with Schedule (B).

(6) *Hoods over restaurant type ranges etc.* Permit fees for the installation of holds over restaurant type ranges, candy kettles, cruller furnaces and appliances for frying, barbecuing, broiling of meats, bakery or confectionery products shall be in accordance with section (c).

(7) *Ventilating system other than in one-or two-family residence.* Permit fees for the installation of ventilating system other than in a one- or two-family residence shall be in accordance with Schedule (D).

(8) *Vertical gas vents, metal smokestacks, etc.* Permit fees for the installation of ventilating system other than in a one- or two-family residence shall be in accordance with Schedule (E).

(9) *Total connected load.* The permit fee schedule shall be confined to the total connected load which shall include a one (1) unit each single family residence. Each tenant unit in duplexes, tenant unit in multi-family residences, each tenant space commercial establishments, each tenant space apartment house, each tenant space institution or industrial plant.

(10) *Gas hot water heaters.* Permit fees for the replacement of gas hot heaters shall be in accordance with Schedule (F) below:

Permit Fee Schedule (A)	
Heating Systems	
BTU input	Fee
Up to 125,000	$ 25.00
125,001—200,000	30.00
200,001—300,000	40.00
300,001—600,000	60.00
600,001—1,000,000	70.00
1,000,001—2,000,000	80.00
2,000,001—3,000,000	100.00
3,000,001—4,000,000	130.00
Plus $100.00 per million over 4,000,000	

Permit Fee Schedule (B)		
Cooling Systems		
BTU/hr	Tons	Fee
Up to 24,000	2	$ 10.00
24,001—36,000	3	20.00
36,001—48,000	4	30.00
48,001—60,000	5	40.00
60,001—120,000	10	60.00
120,001—180,000	15	80.00
180,001—240,000	20	95.00
240,001—600,000	50	150.00
600,001—1,200,000	100	190.00
Plus $1.50 per ton over 100 tons		

Permit Fee Schedule (C)	
Grease Hoods	
Face Area in Sq. Ft.	Fee
Up to 10	$ 10.00
10.1—15	20.00
15.1—20	30.00
20.1—25	40.00
25.1—45	50.00
45.1—80	60.00
80.1—100	70.00
100.1—over	80.00

Permit Fee Schedule (D)	
Fans	
Motor HP	Fee
Up to .9	$ 7.00
1—1.9	15.00
2—4.9	20.00
5—9.9	35.00
10—19.9	60.00
20—29.9	80.00
30—49.9	100.00
50—59.9	140.00
60—74.9	165.00
75 and Over	185.00

Permit Fee Schedule (E)	
Vents, Stacks and Chimneys	
BTU Input	Fee
0—74,000	$ 16.50
74,000—100,000	17.50
100,000—400,000	28.00
400,001—550,000	38.50
550,001—700,000	39.00
700,001—900,000	39.50
900,001—1,200,000	40.00
1,200,001—1,800,000	40.50
1,800,001—2,600,000	51.00
2,600,001—3,400,000	51.50
3,400,001—4,500,000	52.00
4,500,001—5,600,000	52.50
5,600,001—8,400,000	54.00
8,400,001—12,000,000	56.00
12,000,001—16,000,000	58.00
16,000,001—21,000,000	60.00
21,000,001—27,000,000	62.00

27,000,001—45,000,000	70.00
45,000,001 and Over	75.00

Permit Fee Schedule (F)	
Water Heater	
BTU	Fee
0—50,000	$ 15.00
50,001—100,000	25.00
100,001—200,000	35.00
Over 200,000	50.00

Permit Fee Schedule (G)
Commercial and Industrial Heating

Total Electric (heat pump)	
BTU	Fee
2 ton	$50.00
24,000 up to 36,000	52.00
36,000 up to 48,000	54.00
48,000 up to 60,000	56.00

Gas Heat	
BTU	Fee
Up to 50,000	$50.00
50,001 up to 125,000	56.00
125,001 up to 200,000	62.00
200,001 up to 300,000	70.00
300,001 up to 600,000	94.00
600,001 up to 1,000,000	118.00
1,000,001 up to 2,000,000	200.00
2,000,001 up to 3,000,000	280.00
3,000,001 up to 4,000,000	360.00

(11) *Special.* Permit fees for the installation of the following equipment shall be:

a. Circulating air blowers on existing heating equipment, $15.00 each.

b. Commercial incinerators and barbecue pits, including vents or stacks, $15.00 each.

c. Residential incinerators, including vent or stacks, $15.00 each.

d. Combustion air or induced draft fans, $15.00 each.

e. Duct alteration, $15.00.

f. Change of contractor/company, $15.00.

g. Review of fire suppression system per head, $1.00.

(12) *Minimum fee:* Unless otherwise provided herein the minimum permit fee shall be $40.00.

(d) *Permit application time limit, penalty.* There shall be a penalty of the greater of $25.00 or double the price of the permit, if the permit is not applied for within 48 hours of the beginning of work.

(e) *Reinspection fees.* When the owner or contractor calls for an inspection and the inspector finds that the work is not ready for inspection, a reinspection fee of $10.00 will be assessed. All reinspection fees shall be paid prior to final inspection of mechanical work.

(Ord. No. 95-07, 8-14-95; Ord. No. 2006-015, 9-11-06)

Section 14-10. Excavation or grading of land.

(a) *Permit fee schedule.*

(1) For issuing each permit$15.00

(2) 50 cubic yards or less and

additional10.00

(3) 101 to 1,000 cubic yards: $15.00 for the first 100 cubic yards, plus $5.00 for each additional 100 cubic yards or fraction thereof.

(4) 1,001 to 10,000 cubic yards: $65.00 for the first 1,000 cubic yards, plus $5.00 for each additional 1,000 cubic yards or fraction thereof.

(5) 100,001 cubic yards or more: $155.00 for the first 100,000 cubic yards, plus $5.00 for each additional 10,000 cubic yards or fraction thereof.

(Ord. No. 95-07, 8-14-95)

Section 14-11. Moving of buildings or structures.

(a) The fee for moving any building or structure, other than manufactured (mobile) homes, signs or fences, shall be $100.00.

(b) All fees shall be paid by the person to whom the permit is issued and must be paid when applying for the permit.

(Ord. No. 95-07, 8-14-95)

Section 14-12. Demolition.

(a) Demolition, removal or relocation of structures in the city shall not proceed until first obtaining a demolition permit from the building department. The application for ther permit shall be accompanied with a permit fee as set out in the city's schedule of fees. It shall be the duty of the applicant to furnish evidence that any structure for which an application for a demolition, removal or relocation permit is filed was constructed less than 50 years from the date of application.

(b) Permits to demolish, remove or relocate structures within the Downtown Development Authority District as delineated on the city's official zoning map for which construction was completed more than 50 years prior to application shall be obtained through the following procedures:

(1) Application for permits within the Downtown Development Authority District as delineated on the city's official zoning map shall be filed with building department. The application shall be accompanied with a permit fee as set out in the city's schedule of fees.

(2) Before any such permits shall be issued, the planning commission shall hold a public hearing thereon, official notice of which shall be advertised in a newspaper of general circulation within the city at least two times no sooner than 45 days prior to the hearing date and no later than ten days before the hearing date.

(3) Upon filing an application, a sign provided by the city shall be posted by the applicant in a conspicuous place on the property. Such posted sign shall be not less than six square feet in area, and shall contain information as to the name of the applicant, the owner of the property, a statement indicating that a demolition permit has been applied for, and the date, time, and place of the public hearing regarding such application.

(4) The applicant shall give notice of such application to all persons owning property adjacent to the property, which is the subject of the application. Such notice may be accomplished by personal service to the property owners, or by mailing such notice bia certified or registered mail to the owner. Notice shall be given to the owners no later than 15 days prior to the public hearing.

(5) The planning commission shall consider the following factors and shall then make a recommendation to the city council to either grant or deny the permit request:

a. The historic, scenic or architectural significance of the structure;

b. The effect of the demolition, removal or relocation and subsequent use of the property, and whether such would result in substantial detriment to neighboring property owners or to the public good;

c. Whether reasonable measures can be utilized to preserve the structure, taking into account the value of the structure and the cost to repair the structure;

d. The property rights of the applicant; and

e. Whether denying the permit application would create great practical difficulty or an unnecessary hardship on the applicant or property owner.

(6) The city council shall consider the recommendation of the planning commission at the next regular city council meeting following the public hearing before the planning commission. The council may either; grant the application, deny the application, or postpone its decision until a later date if so requested by the applicant.

(Ord. No. 95-07, 8-14-95; Ord. No. 2008-06, 2-11-08)

Section 14-13. Signs.

(a) *Permit issuing fee.* The permit issuing fee for all signs is $5.00.

(1) Sign permit fees for each type sign:

Type Sign	Fee
Canopy or Awning	$ 5.00
Freestanding	10.00
Incidental	10.00
Projecting	10.00
Suspended	5.00

(b) *Reinspection fee.* If a reinspection is required, an additional $10.00 fee will be assessed. All reinspection fees shall be paid prior to final inspection.

(c) *Starting work without a permit.* Where work for which a permit is required is started prior to obtaining the required permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any person(s) from fully complying with the requirements of the City of Commerce Building Codes in the execution of the work nor from any other penalties or ordinances prescribed by the City of Commerce.

(Ord. No. 95-07, 8-14-95)

Section 14-14. Underground storage tanks.

(a) *Permit issuing fee.* The permit issuing fee for all tanks is $10.00.

(b) *Additional fees.* The following schedule shall also apply:

Size	Fee
0 to 500 gals.	$ 5.00
501 to 8,000 gals.	10.00
8,001 to 20,000 gals.	20.00
Over 20,000 gals.	30.00

(c) *Reinspection fee.* If a reinspection is required, an additional $10.00 fee will be assessed. All reinspection fees shall be paid prior to final inspection.

(d) *Starting work without a permit.* Where work for which a permit is required is started prior to obtaining the required permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any person(s) from fully complying with the requirements of the City of Commerce Building Codes in the execution of the work nor from any other penalties or ordinances prescribed by the City of Commerce.

(Ord. No. 95-07, 8-14-95)

Section 14-15. Swimming pools.

(a) *Permit issuing fee.* The permit issuing fee for above ground is $40.00 and below ground swimming pools is $40.00.

(b) *Reinspection fee.* If a reinspection is required, an additional $10.00 fee will be assessed. All reinspection fees shall be paid prior to inspection.

(c) *Starting work without a permit.* Where work for which a permit is required is started prior to obtaining the required permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any person(s) from fully complying with the requirements of the City of Commerce Building Codes in the execution of the work nor from any other penalties or ordinances prescribed by the City of Commerce.

(Ord. No. 95-07, 8-14-95; Ord. No. 2006-015, 9-11-06)

Section 14-16. Exemption from application of state law regarding self-inspection of certain water and sewer lines.

Pursuant to the authority contained in Section 3 of Act 1046 Georgia Laws, 1996 p_____, subsection (d) of Code Section 8-2-26 of the Official Code of Georgia Annotated, relating to self-inspection of water and sewer projects by master plumbers or utility contractors, shall not be applicable within the City of Commerce.

(Ord. No. 96-05, § 1, 6-10-96)

Editor's note(s)—Provisions enacted by Ord. No. 96-05, adopted June 10, 1996, and designated as § 14-2 have been redesignated at the discretion of the editor and included herein as § 14-16.

Section 14-17. Smoke detectors.

It is required that in all residential dwelling units, whether new or existing, smoke alarms or smoke detectors be installed. Smoke alarms or detectors must be installed in the following locations of the dwelling unit:

(1) In each sleeping room,

(2) In a location outside sleeping rooms, but in the immediate vicinity of sleeping rooms, and

(3) On each additional story of the dwelling unit which does not contain a sleeping room, including basements but not including crawl spaces or uninhabitable attics.

The smoke alarms or smoke detectors must be of a type approved by the fire chief or his desingee. Smoke alarms or smoke detectors must be installed in dwelling units existing upon the effeictive date of this section within six months from the effective date of this section.

(Ord. No. 2007-09, 5-14-07)

Section 14-18—14-25. Reserved.

ARTICLE II. INSTALLATION OF PRE-OWNED MANUFACTURED HOMES

Section 14-26. Definitions.

The following words, terms, or phrases, when used in this article, shall have the meanings ascribed to them in this section.

Applicant means any person seeking to install a pre-owned manufactured home in the city limits of the City of Commerce.

Building inspector means the person appointed, employed, or otherwise designated as the director of planning, permits and inspections; the municipal building official or any of his or her assistants.

Certificate of occupancy means a document issued by the building inspector certifying that a pre-owned manufactured home is in compliance with applicable requirements set forth by this article, and indicating it to be in a condition suitable for residential occupancy.

Guarantee of condition bond means a surety bond to guarantee that the affidavit and photographs required by paragraphs (1) and (2) of subsection (a) of section 14-28 of this article reasonably portray or represents the existing condition of the pre-owned manufactured home proposed for relocation. In lieu of the bond, a cash deposit may be deposited with the city.

Install means to construct a foundation system and to place or erect a manufactured home on such foundation system. Such term includes, without limitation, supporting, blocking, leveling, securing, or anchoring such manufactured home and connecting multiple or expandable sections of such manufactured home.

Jurisdiction means the areas within the city limits of the City of Commerce, Georgia.

Manufactured home means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-

conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

Pre-owned manufactured home means any manufactured home that has been previously used as a residential dwelling and has been titled.

(Ord. No. 2010-013, 9-13-2010)

Section 14-27. Conditions.

All pre-owned manufactured homes located in the jurisdiction shall bear a label certifying it was constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. (the HUD Code) and shall be installed in accordance with O.C.G.A. § 8-2-160, et seq. and must meet all requirements for manufactured homes listed in the City of Commerce Zoning Ordinance.

(Ord. No. 2010-013, 9-13-2010)

Section 14-28. Permitting, inspection, certificate of occupancy and fees.

A permit shall be required to locate a pre-owned manufactured home in the jurisdiction.

(1) *Permit.* To obtain a permit, applicants shall provide to the building inspector:

   a. An affidavit signed by the applicant that the pre-owned manufactured home meets health and safety standards required by this Act;

   b. Photographs of the interior and exterior of the pre-owned manufactured home providing evidence that home meets the minimum health and safety standards of section 14-29;

   c. A $1,000.00 refundable guarantee of condition bond or $1,000.00 refundable cash deposit; and

   d. The permit and inspection fee required by subsection (4) of this section.

(2) *Inspection.* Upon receipt of a permit, applicants may relocate the manufactured home on a residential site for the purposes of inspection. Applicant shall arrange for an inspection to be held once the installation of the manufactured home is complete.

(3) *Certificate of occupancy.* A certificate of occupancy shall be issued to the applicant at such time that the building inspector certifies that the requirements of this article have been met.

(4) *Fee.* A minimum permit and inspection fee of $400.00 shall be charged to the applicant to cover the cost to the city to process the permit application and inspect the pre-owned manufactured home, electrical permit and installation permit fee. Such fee shall cover the initial inspection and one followup inspection. The applicant shall be charged $50.00 for each additional followup inspection that may be necessary.

(5) *Alternative inspection.* At the request of the applicant, the building inspector may, at his or her discretion, inspect a pre-owned manufactured home prior to its being relocated if the home is then located at another site within the city.

(Ord. No. 2010-013, 9-13-10)

Section 14-29. Minimum health and safety standards.

All preowned manufactured homes shall comply with the following before being issued a certificate of occupancy by the building inspector:

(1) *HUD Code.* Every pre-owned manufactured home located in the jurisdiction shall be in compliance with the Federal Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401-5445 (the HUD Code) and shall not have been altered in such a way that the home no longer meets the HUD Code.

(2) *Interior condition.* Every floor, interior wall, and ceiling of a pre-owned manufactured home shall be in sound condition. Doors and windows shall be operable, watertight and in good working condition. The floor system shall be in sound condition and free of warping, holes, water damage, or deterioration.

(3) *Exterior condition.* The exterior of all pre-owned manufactured homes shall be free of loose or rotting boards or timbers and any other conditions that might admit rain or moisture to the interior portions of the walls or to occupied spaces. The exterior siding shall be free of rot and rust. Roofs shall be structurally sound and have no obvious defects that might admit rain or cause moisture to collect on the interior portion of the home.

(4) *Sanitary facilities.* Every plumbing fixture, water, and waste pipe of a pre-owned manufactured home shall be in a sanitary working condition when properly connected, and shall be free from leaks and obstructions. Each home shall contain a kitchen sink. Each bathroom shall contain a lavatory and water closet. At least one bathroom shall contain a tub and/or shower facilities. Each of these fixtures shall be checked upon being connected to ensure they are in good working condition.

(5) *Heating systems.* Heating shall be safe and in working condition. Unvented heaters shall be prohibited.

(6) *Electrical systems* (switches, receptacles, fixtures, etc.) shall be properly installed and wired and shall be in working condition. Distribution panels shall be in compliance with the approved listing, complete with required breakers, with all unused openings covered with solid covers approved and listed for that purpose. The home shall be subject to an electrical continuity test by a licensed electrician to assure that no faults exist and all metallic parts are properly bonded. Each pre-owned manufactured home shall contain a water heater in safe and working order.

(7) *Hot water supply.* Each home shall contain a water heater in safe and working condition.

(8) *Egress windows.* Each bedroom of a manufactured home shall have at least one operable window of sufficient size to allow egress if necessary.

(9) *Ventilation.* The kitchen in the home shall have at least one operating window or other ventilation device.

(10) *Smoke detectors.* Each pre-owned manufactured home shall contain one operable battery-powered smoke detector inside and outside each bedroom and in the kitchen, which must be installed in accordance with the manufacturer's recommendations.

(Ord. No. 2010-013, 9-13-10)

Section 14-30. Enforcement.

(a) Permanent connection to utilities shall not be approved until the building inspector has issued a certificate of occupancy.

(b) Owners of pre-owned manufactured homes that are not in compliance upon a fourth inspection shall have their permit revoked and shall be required to remove the home from the jurisdiction at their own expense.

(c) The guarantee of condition bond or cash deposit will be forfeited after 90 days from the date of inspection, unless all conditions and standards are met prior to the end of the 90 days or an extension has been issued in writing by the building inspector.

(Ord. No. 2010-013, 9-13-10)

Section 14-31. Penalties.

Failure to remove a pre-owned manufactured home from the jurisdiction upon failure to receive a certificate of occupancy shall be punishable by a fine of $500.00. Each day any violation under this article continues shall be considered a separate offense.

(Ord. No. 2010-013, 9-13-10)

Section 14-32—14-60. Reserved.

ARTICLE III. DILAPIDATED BUILDINGS[12]

Section 14-61. 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:

Closing means securing and causing a dwelling, building, or structure to be vacated.

Dwellings, buildings, lots or structures means any building or structure or part thereof used or occupied for human habitation, commercial, industrial, or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, and also includes any building or structure of any design and all premises wherein such building or structure is located.

Owner means the holder of the title in fee simple and every security deed holder of record.

Parties in interest means persons in possession of the property and all individuals, associations, and corporations who have interest of record in the county where the property is located in a dwelling, building, lot or structure, including executors, administrators, guardians, and trustees.

(Ord. of 10-12-92, § 1-1)

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

[12]State law reference(s)—Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation, O.C.G.A. § 36-61-11; nuisances generally, O.C.G.A. § 41-1-1 et seq.; ordinances relating to unfit buildings or structures, O.C.G.A. § 41-2-9.

Section 14-62. Enforcement officer designated, duties.

(a) The chief of police shall assume all of the duties and exercise such powers as may be necessary or convenient to carry out and effectuate the abatement of nuisances, as set forth in this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7 through 41-2-17.

(b) The powers which may be exercised by the chief of police, as the public officer contemplated by this article, in carrying out and effectuating the purpose and provisions of this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7 through 41-2-17, include, without limitation, the following powers in addition to others granted in this article:

(1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings, lots or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use;

(2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;

(3) To enter upon premises for the purpose of making examinations; provided, however, that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this article; and

(5) To delegate any of his functions and powers under this article to such officers and agents as he may designate.

(Ord. of 10-12-92, § 1-2)

Section 14-63. Determination of nuisance.

The chief of police, as the public officer contemplated by this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7 through 41-2-17, may determine, under existing ordinances, that a dwelling, building, lot or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he finds that conditions exist in such building, dwelling, lot, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, lot or structure; of the occupants of the neighborhood dwellings, buildings, lots or structures; or of other residences of the city. Such conditions may include the following (without limiting the generality of the foregoing):

(1) Defects therein increasing the hazards of fire, accidents or other calamities.

(2) Lack of adequate ventilation, light, or sanitary facilities.

(3) Dilapidation.

(4) Disrepair.

(5) Structural defects.

(6) Code violations.

(7) Uncleanliness.

(8) Presence of substances emitting noxious odor or fumes, rubbish, litter, rubble and trash, overgrown vegetation, malfunctioning private sewage disposal systems, hazardous objects or any other condition recognized as a nuisance pursuant to state law.

(9) The presence of junked motor vehicles or parts thereof in such a condition that they constitute a health hazard or unsightly nuisance as contemplated by O.C.G.A. § 26-60-4.

(Ord. of 10-12-92, § 1-3)

State law reference(s)—Abandoned automobiles as solid waste, O.C.G.A. § 12-8-22(11); authority to provide by ordinance for removal and disposal of junked vehicles, O.C.G.A. § 36-60-4; when police officers may remove vehicles, O.C.G.A. § 40-6-206; abandoned motor vehicles, O.C.G.A. § 40-11-1 et seq.; removal of improperly parked cars, O.C.G.A. § 44-1-13.

Section 14-64. Complaint; notice of hearing.

Whenever a request is filed with the public officer by a public authority, to include the fire department, police department, street department, health department, or building inspection department, or at least five residents of the city charging that any dwelling, building, lot or structure is unfit for human habitation or for commercial, industrial, or business use, or that a nuisance is present, or whenever it appears to the public officer, on his own motion, that any dwelling, building, lot or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use, or that a nuisance is present, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and any parties in interest in such dwelling, building, lot or structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer, or his designated agent, at a place within the county in which the property is located, fixed not less than ten days nor more than 30 days after the serving of such complaint; that the owner and any parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(Ord. of 10-12-92, § 1-4(1))

Section 14-65. Findings; issuance of order.

(a) If, after notice and hearing, the public officer determines that the dwelling, building, lot or structure under consideration is unfit for human habitation or is unfit for its current commercial, industrial, or business use, or that a nuisance is present, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(1) To abate the nuisance;

(2) If the repair, alteration, or improvement of the dwelling, building, lot, or structure can be made at a reasonable cost in relation to the value of the dwelling, building, lot, or structure, requiring the owner or parties in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, lot, or structure so as to render it fit for human habitation or for current commercial, industrial, or business use or to vacate and close the dwelling, building, lot or structure as a human habitation; or in the alternative to remove or demolish such dwelling, building, lot, or structure;

(3) If the repair, alteration, or improvement of the dwelling, building, lot, or structure cannot be made at a reasonable cost in relation to the value of the dwelling, building, lot, or structure, requiring the owner or parties in interest, within the time specified in the order, to remove or demolish such dwelling, building, lot, or structure.

(b) In no event shall the city council require removal or demolition of any dwelling, building, lot, or structure except upon a finding that the cost of repair, alteration, or improvement thereof exceeds one-half the value

such dwelling, building, lot, or structure will have when repaired to satisfy the minimum requirements of this law.

(c) The order of the public official shall provide notice to the owner or parties in interest of their right of appeal under O.C.G.A. § 41-2-13.

(Ord. of 10-12-92, § 1-4(2))

Section 14-66. Action by city; placard.

If the owner or parties in interest fail to comply with an order to abate a nuisance or to repair, alter, improve or to vacate and close or demolish the dwelling, building, lot or structure, the public officer may cause such dwelling, building, lot or structure to be repaired, altered or improved or to be vacated and closed or demolished. The public officer may cause to be posted on the main entrance of any dwelling, building, lot or structure so closed a placard with the following words:

> This building or lot is unfit for human habitation or commercial, industrial, or business use; the use or occupation of this building or lot for human habitation or for commercial, industrial, or business use is prohibited and unlawful.

(Ord. of 10-12-92, § 1-4(3))

Section 14-67. Order to correct nuisance.

If the owner fails to comply with any order to abate the nuisance or repair, alter or improve such dwelling, building, lot or structure or remove or demolish the dwelling, building, lot or structure, the public officer may cause the nuisance to be abated or such dwelling, building, lot or structure to be repaired, altered or improved or to be removed or demolished; provided, however, that the duties of the public officer, set forth in section 14-62 and this section, shall not be exercised until the city council shall have by ordinance ordered the public officer to proceed to effectuate the purpose of O.C.G.A. §§ 41-2-7 through 41-2-17 with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation or unfit for its current commercial, industrial, or business use, or when a nuisance is present which property or properties shall be described in this article.

(Ord. of 10-12-92, § 1-4(4))

Section 14-68. Establishment of lien.

The amount of the cost of abating of a nuisance under this article or repair, alteration or improvement or of vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. Such lien shall attach to the real property upon the payment of all costs of abating the nuisance or repair or demolition by the city council and the filing of an itemized statement of the total sum of such costs by the public officer in the office of the clerk of court on a lien docket maintained by the clerk for such purposes. If the dwelling, building, lot or structure is removed or demolished by the public officer he shall sell the materials of such dwelling, building, lot or structure and shall credit the proceeds of such sale against the cost of the removal or demolition; and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. of 10-12-92, § 1-4(5))

Section 14-69. Collection of lien.

The city council may enforce the collection of any amount due on any lien for the abatement of the nuisance or repair, alteration, improvement, removal, or demolition of dwellings, buildings, lots or structures only in the following manner:

(1) The owner or parties in interest shall be allowed to satisfy the amount due on such lien by paying to the city council within 30 days after the perfection of such lien a sum of money equal to 25 percent of the total amount due and by further paying to city council the remaining balance due on such lien, together with interest at the rate of seven percent per annum, in three equal annual payments, each of which shall become due and payable on the anniversary date of the initial payment made as prescribed in this subsection;

(2) Should the property upon which such lien is perfected be sold, transferred, or conveyed by the owner or parties in interest at any time prior to the termination of such three-year period, then the entire balance due on such lien shall be due and payable to the city council; and

(3) Should the amount due on such lien, or any portion thereof, be unpaid after the passage of such three-year period, or upon the occurrence of the contingency provided for in subsection (2) of this section, the city may enforce the collection of any amount due on such lien for alteration, repair or removal of structures in the same manner as provided in O.C.G.A. § 48-5-358 and other applicable state statutes. This procedure shall be subject to the right of redemption by any person having any right, title or interest in or lien upon such property, all as provided by O.C.G.A. § 48-4-40 et seq.

(Ord. of 10-12-92, § 1-4(6))

Section 14-70. Service of complaints, orders.

(a) Complaints or orders issued by the public officer pursuant to the provisions of this article shall, in all cases, be served upon each person in possession of such property, each owner, and each party in interest. The return of service signed by the public officer or his agent or an affidavit of service executed by any citizen of this state, reciting that a copy of such complaint or orders was served upon each person in possession of such property, each owner, and each party in interest personally, or by leaving such copy at the place of his residence, shall be sufficient evidence as to the service of such person in possession, owner and party in interest.

(b) If any of the owners and parties in interest shall reside in the state but outside the city limits, service shall be perfected by causing a copy of such complaint or orders to be served upon such party or parties by the sheriff or any lawful deputy of the county of the residence of such party or parties or such service may be made by any citizen. The return of such sheriff or lawful deputy of the affidavit of such citizen that such party or parties were served either personally or by leaving a copy of the complaint or orders at the residence shall be conclusive as to such service.

(c) Nonresidents of this state shall be served by publishing the complaint or orders once each week for two successive weeks in a newspaper of general circulation within the city limits. A copy of such complaint or orders shall be posted in a conspicuous place on premises affected by the complaint or orders. Where the address of such nonresidents is known, a copy of such complaint or orders shall be mailed to them by registered or certified mail.

(d) If either the owner or any party in interest is a minor or an insane person or person laboring under disabilities, and the guardian or personal representative resides in the state outside the city limits or is a nonresident, he shall be served as provided for in subsection (b) or (c) of this section. If such minor or insane person or person laboring under disabilities has no guardian or personal representative or if such minor or

insane person lives outside the city limits or is a nonresident, service shall be perfected by serving such minor or insane person personally or by leaving a copy at the place of his residence which shall be sufficient evidence as to the service of such person; in the case of other persons who live outside of the city or are nonresidents, service shall be perfected by serving the judge of the probate court of the county wherein such property is located who shall stand in the place of and protect the rights of such minor or insane person or appoint a guardian ad litem for such person.

(e) If the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer shall make an affidavit to that effect, the service of such complaint or order upon such persons shall be made in the same manner as provided in subsection (c) of this section or service may be perfected upon any person holding himself out as an agent for the property involved.

(f) A copy of such complaint or orders shall also be filed in the proper office or offices for the filing of lis pendens notice in the county in which the dwelling, building, or structure is located and such filing of the complaint or orders shall have the same force and effect as other lis pendens notices provided by law. Any such complaint or orders or an appropriate lis pendens notice shall contain a statement to the effect that a lien may arise against the described property and that an itemized statement of such lien is maintained on a lien docket maintained by the city clerk.

(Ord. of 10-12-92, § 1-5)

Section 14-71. Appeal from order.

Any person affected by an order issued by the public officer under this article may petition to the superior court for an injunction pursuant to the provisions of O.C.G.A. § 41-2-13.

(Ord. of 10-12-92, § 1-6)

Section 14-72—14-79. Reserved.

ARTICLE IV. CROSS CONNECTION AND BACKFLOW PREVENTION

Section 14-80. 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:

Acceptable entry conditions means the conditions that must exist in a permitted space to allow entry and to ensure that employees involved with a permit requiring a confined space can safely enter into and work within the space.

Approved is used in reference to a water supply that has been approved by the mayor and council. As used in air gap separation, double check valve assembly or other backflow prevention assemblies or methods, the term shall mean as allowed or sanctioned by the latest edition of the Standard Plumbing Code adopted by the city.

Backflow means the undesirable reversal of flow of water or mixtures of water and other liquids, gasses, or other substances into the distribution pipes of potable supply of water.

Backflow prevention assembly (approved) means an assembly that has been investigated and approved by state or federal regulatory agency, used to prevent backflow into a potable water system, based on the degree of hazard either existing or potential.

Backpressure means an elevation of pressure in the downstream piping system above the supply pressure at the point of consideration that would cause or tend to cause a reversal of the normal flow through the backflow prevention assembly.

Backsiphonage means a form of backflow due to a reduction in system pressure that causes a negative or sub atmospheric pressure to exist at a site in the water system.

Confined space means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work;

(2) Has limited or restricted means of entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults and pits are spaces that may have limited means of entry or exit); and

(3) Is not designed for continuous employee occupancy.

Customer means the owner, renter, or lessee of residential, commercial, industrial or government facilities receiving service from the city water system.

Containment means the total isolation of a facility with a potential hazard from the public water supply system commensurate with the degree of hazard.

Cross connection means any unprotected, actual or potential connection or structural arrangement between a public or a customer's potable water system and any other source system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied.

Degree of hazard shall be derived from the evaluation of conditions within the city water system that can be classified as either a pollutant (non-health) or a contaminant (health) hazard.

Health hazard means an actual or potential threat of contamination of a physical or toxic nature to the public potable water system that would be a danger to health.

Owner means the person who has legal title to, or license to operate or habitat in, a property upon which a cross connection inspection is to be made or upon which a cross connection is present.

Pollution means an impairment of the quality of water to a degree that does not create a hazard to the public health but does adversely and unreasonably affect the aesthetic qualities of such water for domestic use.

Purveyor means a water supplier.

Service connection means the point of delivery of water to the premises, the normal location of the meter. It is the end of the water purveyor's jurisdiction and the beginning of the customer's responsibility.

(Ord. No. 2013-004, 3-18-13)

Section 14-81. Owner responsibilities.

(a) *Thermal expansion.* It shall be the responsibility of the owners of the commercial, industrial and residential premises to provide necessary protection against thermal expansion as needed and specified by relevant standards and enforced by the city.

(b) *Confined space.* Customers shall comply with OSHA's regulations codified at 29CFR 1910.146, regarding permit-confined spaces.

(Ord. No. 2013-004, 3-18-13)

Section 14-82. Inspections and notice of violations.

(a) The city shall provide an onsite evaluation and/or inspection of plans in order to determine whether a backflow preventer will be required, and if so, which type.

(b) Plans for new installations must be approved by the city prior to installation.

(c) For premises existing prior to the adoption of the ordinance from which this section derives, the city will perform evaluations and inspections of plant and/or premises and inform the owner by letter of any corrective action deemed necessary, the method of implementing the correction and the time allowed for the correction to be made, depending on the degree of hazard. Ordinarily, 90 days will be allowed; however, this time may be shortened depending upon the degree of hazard involved and the history of the device in question.

(d) The city will not allow any service connection to remain unless it is protected by an approved backflow preventer for which a permit has been issued and which will be tested regularly to ensure satisfactory operation.

(e) The city shall provide written notice of violations at the time of the first re-inspection. The city will allow an additional 15 days for the required corrective action. If the owner fails to complete corrective action at the time of the second re-inspection, the water service to the premises will be terminated. If the owner demonstrates corrective action to the city, a time extension may be granted by the city, However, in no case shall the extension exceed an additional 30 days.

(f) If the city determines at any time that a serious threat to the public health exists, the water service will be terminated immediately.

(g) The city shall have on file a list of private contractors who are certified backflow device testers. All charges for these tests will be paid by the customer or the owner of the building or property.

(h) The city will begin initial premises inspection to determine the nature of existing or potential hazards, following the approval of this article by the city council. Initial focus will be on high hazard industries and commercial properties.

(Ord. No. 2013-004, 3-18-13)

Section 14-83. Owner requirements.

(a) The owner's system will be open for inspection at all reasonable times to authorized representatives of the city to determine the existence of a cross connection, other structural or sanitary hazards, or violations of this article.

(b) The owner shall be responsible for elimination or protection of all cross connections on his premises.

(c) The owner shall correct any malfunction of the backflow preventer revealed by periodic testing.

(d) The owner, after being informed by the city, shall at his expense, install, maintain and test or have tested any backflow preventers on the premises.

(e) The owner shall inform the city of any proposed or modified cross connections and also any existing connections of which the owner is aware but has not been found by the city.

(f) The owner shall install only backflow preventers approved by the city.

(g) The owner shall be responsible for the payment of all fees for permits, annual or semi-annual device testing, retesting in case the device fails to operate correctly, and second re-inspections for compliance with the city water system.

(h) The owner shall not install a bypass around any backflow preventer unless there is a backflow preventer of the same type on the bypass. Owners who cannot shut down operation for testing of the device must supply additional devices necessary to allow testing to take place.

(i) The owner shall install backflow preventers in a manner approved by the city.

(j) Any owner having a private well or other private water source must have a permit if the well or source is cross connected to the city's system. Permission to cross connect may be denied by the city. The owner shall be required to install a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross connected to the city's system.

(k) If the owner installs plumbing to provide potable water for domestic purpose which is on the city's side of the backflow preventer, such plumbing must have its own backflow preventer installed.

(Ord. No. 2013-004, 3-18-13)

Section 14-84. Discontinuance of water service; Required installation of backflow prevention devices.

(a) The city is authorized to discontinue water service when necessary to prevent contamination of the public water system due to possible cross connections, when it is necessary to protect the water system or individual properties from emergency cross connection or backflow situations.

(b) The city is further authorized to install or require to be installed suitable backflow prevention devices at the customer's service connection or other areas as needed to prevent contamination or the risk thereof to the public water system.

(Ord. No. 2013-004, 3-18-13)

Section 14-85. Enforcement/penalties.

(a) A written notice of noncompliance will be given, including a recommendation that will bring the customer into compliance within a specific time period. the time period will be determined based on the degree of hazard,

(b) Failure of compliance at the expiration of the specified time period may be subject to:

(1) Assessment of a fine not to exceed $1,000.00 per day per offense and/or termination of the water, sewer, and garbage service;

(2) Issuance of a citation and summons to appear in court for each violation; and/or termination of water, sewer, and garbage service until compliance has been achieved and all fines have been satisfied.

(Ord. No. 2013-004, 3-18-13)

Section 14-86—14-89. Reserved.

ARTICLE V. THIRD-PARTY INSPECTIONS AND PLAN REVIEW

Section 14-90. Definitions.

(a) For purposes of and in regard to third-party inspections, the following definitions shall apply unless the context clearly indicates otherwise:

Approved third-party inspectors and plans reviewer list: a list maintained by the department comprised of the names of approved third-party inspectors and plans reviewers that have complied with the application and renewal requirements of the City of Commerce Third-Party Inspection and Plans Review Program and have been approved to perform third-party inspections and plans review pursuant to this article of the City of Commerce Code.

Approved third-party inspector: a registered professional engineer or registered professional architect that has complied with the application and renewal requirements of the City of Commerce Third-Party Inspection and Plans Review Program and has been approved to perform third-party inspections pursuant to this article of the City of Commerce Code. An approved third-party inspector is intended to constitute a "private professional provider" for the purposes of performing inspections as described in the State Act.

Approved third-party plans reviewer: a registered professional engineer or registered professional architect that has complied with the application and renewal requirements of the City of Commerce Third-Party Inspection and Plans Review Program and has been approved to perform third-party plans review pursuant to this article of the City of Commerce Code. An approved third-party plans reviewer is intended to constitute a "private professional provider" for the review of building construction plans as described in the State Act.

City: The incorporated areas of the City of Commerce, a municipal corporation of the State of Georgia.

Convenience fees: Fees established by the department to be paid to the city upon the election by an applicant to use a third-party inspector or third-party plans reviewer despite the department otherwise being able to provide inspection and plan review services within the time frames required by the state Act. Such fees shall be the same as any regulatory fees assessed by the department for inspections and plan review services performed by the department.

Department: The City of Commerce Planning and Development Department, or such other department as may be assigned by the Commerce City Council the responsibility of performing inspections and overseeing the third-party inspection and plans review system described herein.

Inspection: The observance of work and the performance of test for certain components and elements to establish conformance with City of Commerce approved construction documents, building codes and ordinances adopted by the City of Commerce, and the requirements of the state minimum standards as adopted and amended by the Georgia Department of Community Affairs.

Inspection certification: A written statement signed by an approved third-party inspector or his/her approved technician, which shall indicate that the item(s) being inspected, in the approved third-party inspector's professional opinion and to the best of their knowledge, complies with the City of Commerce approved construction documents, building codes and ordinances adopted by the City of Commerce, the requirements of the state minimum standards as adopted and amended by the Georgia Department of Community Affairs, and any other applicable inspections that are typically performed by inspectors employed by the City of Commerce.

Inspection field report: a written report prepared by an approved third-party inspector or a technician working under the direct supervision of an approved third-party inspector describing the work conducted and findings of an inspection.

Plans review affidavit: a written affidavit on a form adopted by the department of community affairs that is completed and signed under oath by an approved third-party plans reviewer, which shall indicate that the plans which have been reviewed for the purpose of a building permit for the application in question, in the approved third-party plans reviewer's professional opinion and to the best of their knowledge, complies with the regulatory requirements as designated by the City of Commerce, including the Georgia State Minimum Standard Codes most

recently adopted by the department of community affairs and any locally adopted ordinances and amendments to such codes, applicable zoning ordinances and conditions, design standards, and any other applicable laws and regulations that would otherwise be required of staff employed by the department.

Registered professional architect: An individual that holds a certificate of registration issued under O.C.G.A. tit. 43, ch. 4.

Registered professional engineer: An individual that holds a certificate of registration issued under O.C.G.A. tit. 43, ch. 15.

Regulatory fees: all fees established by the department to be paid to the department for any regulatory action, inspection services, or plan review services as provided by the state Act and this article.

State Act: O.C.G.A. § 8-2-26.

Technician: An individual that performs inspections under the direct supervision of an approved third-party inspector.

Third-party plans review: building construction plans review performed in conformance with this program by approved third-party plans reviewers.

Third-party inspection: inspection performed in conformance with this program by approved third-party inspectors.

Third-party inspection and plans review program: the rules and procedures described in this third-party inspection and plans review ordinance.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-91. Third-party inspection and plans review program.

(a) The department will establish and maintain an approved third-party inspectors and plans reviewers list from whom the department will accept third-party inspections and third-party plans reviews in accordance with this third-party inspection and plans review ordinance.

(b) In full compliance with the requirements of the State Act, the City of Commerce shall allow owners, developers, and contractors to submit inspection certifications by approved third-party inspectors and plans review affidavits by approved third-party plans reviewers in order to satisfy certain inspection and plans review requirements.

(c) The department will only consider inspection certifications and plans review affidavits from individuals listed on the approved third-party inspector and plans reviewer list. The City of Commerce makes no representation concerning the approved third-party inspectors and approved third-party plans reviewers other than that they have submitted evidence showing that they have met the minimum criteria necessary to qualify for the third-party inspection and plans review program described herein.

(d) In order for an inspection certification or plans review affidavit to be accepted by the department for a particular project, an approved third-party inspector or approved third-party plans reviewer must be independent of, and must not be an employee of or otherwise affiliated with or financially interested in the person, firm or corporation engaged in the construction project to be inspected or reviewed.

(e) The person, firm or corporation retaining an approved third-party inspector or approved third-party plans reviewer to conduct an inspection or plans review shall be required to pay to the city the same regulatory fees and charges which would have been required had the inspection or plans review been conducted by a city inspector or city plan reviewer. Should the department determine that it cannot conduct a particular inspection or plans review in a time as determined by the State Act, the applicable regulatory fees shall be reduced by 50 percent. Should the department determine that it can conduct a particular inspection or plans

review in a time as determined by the State Act, a convenience fee shall be paid to the city. Upon paying in full of the convenience fees associated with the complete application, the applicant may nevertheless choose to retain, at its own expense, an approved third-party inspector or approved third-party plans reviewer to provide the required inspection or plan review, subject to the requirements set forth in this article. Any regulatory fees or convenience fees paid to the city are nonrefundable.

(f) All other fees and costs related to the performance of the third-party inspections or third-party plans review are matters solely between the approved third-party inspector or approved third-party plans reviewer and the person, firm, or corporation engaging the approved third-party inspector or approved third-party plans reviewer.

(g) Notwithstanding the submission of an inspection certification or plans review affidavit, the department retains the authority to make all code interpretations and to monitor the quality of all third-party inspections and third-party plans reviews and nothing in this article shall be construed as authorizing any approved third-party inspector or approved third-party plans reviewer to issue a building permit or a certificate of occupancy.

(h) The department will continue to provide full support to customers that choose not to utilize the services of approved third-party inspectors or approved third-party plans reviewers.

(i) The department will follow all applicable procedures set forth in the State Act for all inspections and plans reviews. For purposes of processing applications in compliance with the State Act, an application submitted to the department shall not be considered complete until all applicable fees have been paid, and all applicable city departments have previously received the application and provided any required approvals.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-92. Inspections types.

(a) The department will, at a minimum, accept third-party inspections in compliance with the State Act for any construction inspections required by the city Code. A comprehensive list of the various inspections types, their allowed timing and other related details are established by department policy. This document is available from the department and is published on the department's website.

(b) Approved third-party inspectors shall be authorized to conduct any inspection required by the city necessary or required to determine compliance with all regulatory requirements and for the issuance of a building permit or certificate of occupancy, provided that the inspection being performed is within the scope of the approved third-party inspector's area of competency. However, nothing in this article shall be construed as authorizing third-party inspections for compliance with state or local fire safety standards or erosion control standards.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-93. Approved third-party inspector qualifications.

(a) Individuals wishing to be placed on the approved third-party inspectors and plans reviewer list as an approved third-party inspector must submit an initial application along with an application fee as established by the Commerce City Council to the planning and development department.

(b) In order to qualify as an approved third-party inspector, an individual must:

(1) Be, or be a partner in or employed by, an engineering or architect firm, in full compliance with chapter 14 of the Commerce City Code, including timely payment of the occupational tax and registration required thereunder.

(2) Be a registered professional engineer or a registered professional architect as defined in this article.

(3) Otherwise be in good standing with all pertinent certification and professional accreditation boards.

(4) Possess and maintain minimum insurance as described herein.

(5) Demonstrate relevant experience of at least one year.

(6) Possess ICC certifications relevant to the types of inspections performed.

(c) An individual shall not be qualified to be placed on the approved third-party inspectors and plans reviewer list if he/she has had his/her authority to issue third-party inspection certifications in any other jurisdictions revoked. If an individual previously qualified to be on the approved third-party inspectors and plans reviewer list and subsequently has his/her authority to issue third-party inspection certifications revoked, the individual shall be removed from the approved third-party inspectors and plans reviewer list.

(d) An approved third-party inspector may not submit an inspection certification if the approved third-party inspector is an officer or employee of the owner, developer, contractor or other party or if the approved third-party inspector is employed by or a partner in a firm that is affiliated with or financially interested in the owner, developer, contractor or other party on whose behalf the inspection certification is submitted.

(e) Technicians may perform inspections under the supervision of an approved third-party inspector provided that the technician has satisfied any specific requirements as may be designated by the city building inspector.

(f) Technicians performing inspections under the supervision of an approved third-party inspector shall possess ICC certifications relevant to the types of inspections performed.

(g) Approved third-party inspectors shall obtain and maintain the following minimum insurance coverages and provisions, evidence of which shall be submitted to the department with the initial application:

(1) Comprehensive general liability insurance for liability and property damage in an amount of not less than $2,000,000.00 per occurrence.

(2) Professional liability insurance for errors and omissions in an amount of not less than $2,000,000.00 per occurrence and $2,000,000.00 in aggregate coverage for any project with a construction cost of $5,000,000.00 or less. For any project with a construction cost of more than $5,000,000.00, the amount of professional liability insurance for errors and omissions shall not be less than $3,000,000.00 per claim and $3,000,000.00 in aggregate coverage.

(3) Such insurance may be a practice policy or may be project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the final certificate of occupancy or certification of completion for the project.

(4) The cancellation provision shall provide for 30 days' notice of cancellation to the city.

(5) City of Commerce, Georgia, its officers, officials, employees and representatives shall be named as additional insureds on the required insurance policies.

(6) The required insurance coverages shall be provided by an insurance company licensed to do business by and in good standing with the Georgia Department of Insurance at all times.

(7) Approved third-party inspectors shall maintain the minimum insurance coverage as required above at all times during which they are listed as approved third-party inspectors. Approved third-party inspectors shall provide the department with evidence of minimum insurance coverages and provisions on an annual basis prior to the expiration of any policy or coverage and upon request by the department. Should any insurance coverage or information change, the approved third-party inspector shall provide written notice of any such change to the city within ten business days. If at any time an

approved third-party inspector fails to maintain the required insurance coverage, the department may remove them from the approved third-party inspectors and plans reviewer list.

(h) Suspension of technicians and approved third-party inspectors.

(1) An individual who performs inspections under this article, whether a technician or an individual approved third-party inspector, shall be subject to suspension from the approved third-party inspector and plans reviewer list, and from submitting inspection field reports and inspection certifications for the following infractions:

a. Providing inspections without appropriate license or certification.

b. Providing inspection services prior to issuance of a valid building permit.

c. Failing to identify any noncompliance with any applicable code, as amended, governing individual and public safety and welfare (including, but not limited to, sections 308, 310—312, 314, and 315 of the 2018 edition of the International Residential Code, section 607 of the 2018 edition of the International Plumbing Code, sections 406, 502, and 503 of the 2018 edition of the International Fuel Gas Code, and sections 210, 240, and 250 of the 2017 National Electric Code, etc.) as determined in the sole good faith discretion of the chief building official of the city. However, it is the express intent of the city not to impose sanctions on an individual under this article for failing to identify multiple instances of noncompliance in one inspection such as that each such failure constitutes an individual and separate infraction. Rather, multiple failures contained in a single inspection under this paragraph shall be treated as a single infraction.

d. Authorizing any deviation from the approved permit.

e. Falsifying reports.

f. Unauthorized employee performing inspections.

g. Performing unauthorized types of inspections.

h. Inspections passed with hold on project or under stop work.

i. Failure to identify noncompliance with any applicable code not captured in subsection c., above, upon identification of such failure by the city on multiple occasions, as determined in the sole good faith discretion of the chief building official of the city.

(2) Suspension for submitting inspection field reports and inspection certifications for infractions by a technician or individual approved third-party inspector shall be progressive based on the number of infractions in the previous 12-month period. For any combination of infractions within a 12-month period, the following actions and suspensions against a technician or individual approved third- party inspector shall be assessed:

First infraction: Warning letter.

Second infraction: Seven-day suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications.

Third infraction: Thirty-day suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications.

Fourth infraction: Ninety-day suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications.

Fifth infraction: One-year suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications.

(3) An approved third-party inspector shall be subject to progressive action based on the number of infractions in the previous 24-month period by individuals performing inspections, including the individual approved third-party inspector or any one or more technicians acting under the supervision of the approved third-party inspector (which shall include technicians serving as employees, independent contractors, agents, etc.). Violations under this paragraph shall accrue upon every third infraction by an individual contemplated in paragraph (2) above, and shall subject approved third-party inspectors to the following actions and suspensions for any combination of infractions within a 24-month period:

First violation (upon third individual infraction): Written letter of reprimand from the planning and development director.

Second violation (upon sixth individual infraction): Seven-day suspension from approved third-party inspector and plans reviewer list.

Third violation (upon ninth individual infraction): Thirty-day suspension from approved third-party inspector and plans reviewer list.

Fourth violation (upon twelfth individual infraction): Ninety-day suspension from approved third-party inspector and plans reviewer list.

Fifth violation (upon fifteenth individual infraction): Two-year suspension from approved third-party inspector and plans reviewer list.

(4) The city shall send written notice to the approved third-party inspector for each infraction as contemplated in paragraph (2) above, the purpose of which shall be to inform the approved third-party inspector of the number of infractions accruing under paragraph (2), to put the approved third-party inspector on notice of possible violations under this paragraph (3), and so the approved third-party inspector has the opportunity to take any remedial action necessary to prevent future infractions and/or violations.

(5) Notwithstanding any other provision of this article, in the event a technician or individual approved third-party inspector is found to have violated subsection (h)(1)e., falsifying reports, the progressive actions and suspensions of this article may, in the discretion of the city, be bypassed with an immediate suspension and/or disqualification imposed.

(6) Appeal of suspensions and/or disqualifications shall be processed through the construction board of adjustments and appeals at its next scheduled meeting as appeals of administrative decisions.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-94. Procedures for conducting third-party inspections.

(a) An approved third-party inspector shall not suggest, direct, or authorize any deviation from approved construction documents without first obtaining approval from the department.

(b) The following procedures shall apply to all third-party inspections:

(1) To ensure quality control of the third-party inspection and plans review program, a copy of all inspection field reports shall be provided to the department within one business day from the date the inspection is performed.

(2) All inspection field reports shall note the type of inspection and any deficiencies observed.

(3) Inspection certifications shall be submitted one business day from the date the inspection is performed. Once the inspection certification is received, the department will either accept or deny the

inspection certification within two business day following the day of submittal and the inspection status will be updated by the department in the normal course of business.

(4) Final inspections will not be scheduled until all outstanding reinspection fees have been paid.

(5) When performing reinspections for violations initially noted by department staff, each corrected item shall be addressed individually.

(c) The department shall have a right of entry to any premises inspected by an approved third-party inspector or technician to ensure compliance with this article and the State Act.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-95. Approved third-party plans reviewer qualifications.

(a) Individuals wishing to be placed on the approved third-party inspectors and plans reviewer list as an approved plans reviewer must submit an initial application along with an application fee as established by the Commerce City Council.

(b) In order to qualify as an approved third-party plans reviewer, an individual must:

(1) Be, or be a partner in or employed by, an engineering or architect firm, in full compliance with chapter 14 of the City of Commerce Code, including timely payment of the occupational tax and registration required thereunder.

(2) Be a registered professional engineer or registered professional architect as defined in this article.

(3) Otherwise be in good standing with all pertinent certification and professional accreditation boards.

(4) Possess and maintain minimum insurance as described herein.

(5) Demonstrate relevant experience of at least one year.

(c) An individual shall not be qualified to be placed on the approved third-party inspectors and plans reviewer list if he/she has had his/her authority to issue third-party plans review affidavits in any other jurisdictions revoked. If an individual previously qualified to be on the approved third-party inspectors and plans reviewer list and subsequently has his/her authority to issue third party plans review affidavits revoked, the individual shall be removed from the approved third-party inspectors and plans reviewer list.

(d) An approved third-party plans reviewer may not submit a plans review affidavit if the approved third-party plans reviewer is an officer or employee of the owner, developer, contractor or other party or if the approved third-party plans reviewer is employed by or a partner in a firm that is affiliated with or financially interested in the owner, developer, contractor or other party on whose behalf the plans review affidavit is submitted.

(e) Approved third-party plans reviewers shall obtain and maintain the following minimum insurance coverages and provisions, evidence of which shall be submitted to the department with the initial application:

(1) Comprehensive general liability insurance for liability and property damage in an amount of not less than $2,000,000.00 per occurrence.

(2) Professional liability insurance for errors and omissions in an amount of not less than $2,000,000.00 per occurrence and $2,000,000.00 in aggregate coverage for any project with a construction cost of $5,000,000.00 or less. For any project with a construction cost of more than $5,000,000.00, the amount of professional liability insurance for errors and omissions shall not be less than $3,000,000.00 per claim and $3,000,000.00 in aggregate coverage.

(3) Such insurance may be a practice policy or may be project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance

is project-specific, it shall continue in effect for two years following the issuance of the final certificate of occupancy or certification of completion for the project.

(4) The cancellation provision shall provide for 30 days' notice of cancellation.

(5) City of Commerce, Georgia, its officers, officials, employees and representatives shall be named as additional insureds on the required insurance policies.

(6) The required insurance coverages shall be provided by an insurance company licensed to do business by and in good standing with the Georgia Department of Insurance at all times.

(7) Approved third-party plans reviewers shall maintain the minimum insurance coverage as required above at all times during which they are listed as approved third-party plans reviewers. Approved third-party plans reviewers shall provide the department with evidence of minimum insurance coverages and provisions on an annual basis prior to the expiration of any policy or coverage and upon request by the department. Should any insurance coverage or information change, the approved third-party plans reviewer shall provide written notice of any such change to the city within ten business days. If at any time an approved third-party plans reviewer fails to maintain the required insurance coverage, the department may remove them from the approved third-party inspectors and plans reviewer list.

(f) Suspension of approved third-party plans reviewers:

(1) An individual who performs plans reviews under this article shall be subject to suspension from the approved third-party inspector and plans reviewer list, and from submitting plans review affidavits for the following infractions:

a. Providing plans reviews without appropriate license or certification.

b. Failing to identify any noncompliance with any applicable code, as amended, governing individual and public safety and welfare (including, but not limited to, sections 308, 310—312, 314, and 315 of the 2018 edition of the International Residential Code, section 607 of the 2018 edition of the International Plumbing Code, sections 406, 502, and 503 of the 2018 edition of the International Fuel Gas Code, and sections 210, 240, and 250 of the 2017 National Electric Code, etc.) as determined in the sole good faith discretion of the chief building official of the city. However, it is the express intent of the city not to impose sanctions on an individual under this article for failing to identify multiple instances of noncompliance in one inspection such as that each such failure constitutes an individual and separate infraction. Rather, multiple failures contained in a single inspection under this paragraph shall be treated as a single infraction.

c. Falsifying plans review affidavits.

d. Performing unauthorized types of plan reviews.

(2) Suspension for submitting plans review affidavits for infractions by an approved third-party plans reviewer shall be progressive based on the number of infractions in the previous 12-month period. For any combination of infractions within a 12-month period, the following actions and suspensions against an approved third-party plans reviewer shall be assessed:

First infraction: Written letter of reprimand from the planning and development director.

Second infraction: Seven-day suspension from approved third-party inspector and plans reviewer list.

Third infraction: Thirty-day suspension from approved third-party inspector and plans reviewer list.

Fourth infraction: Ninety-day suspension from approved third-party inspector and plans reviewer list.

Fifth infraction: One-year suspension from approved third-party inspector and plans reviewer list.

(3) The city shall send written notice to the approved third-party plans reviewer for each infraction as contemplated in paragraph (2) above, the purpose of which shall be to inform the approved third-party plans reviewer of the number of infractions accruing under paragraph (2) and so the approved third-party plans reviewer has the opportunity to take any corrective action necessary to prevent future infractions.

(4) Notwithstanding any other provision of this article, in the event an approved third-party plans reviewer is found to have violated subsection (f)(1)c., falsifying plans review affidavits, the progressive actions and suspensions of this article may, in the discretion of the city, be bypassed with an immediate suspension and/or disqualification imposed.

(5) Appeal of suspensions and/or disqualifications shall be processed through the construction board of adjustments and appeals at its next scheduled meeting as appeals of administrative decisions.

(Ord. No. 2020-010, § I, 5-18-20)

Section 14-96. Procedures for conducting third-party plan reviews.

(a) Any plan review conducted by an approved third-party plans reviewer shall be no less extensive than plan reviews conducted by city personnel.

(b) The following procedures shall apply to all third-party plans review:

(1) To ensure quality control of the third-party inspection program, a copy of all plans review affidavits shall be provided to the department within five business days of its completion.

(2) All plans review affidavits shall certify that:

a. the plans were reviewed by the affiant who is duly authorized to perform plan review pursuant to the third-party inspection and plans review program; and

b. The plans comply with all applicable regulatory requirements; and

c. The plans submitted for plan review are in conformity with plans previously submitted to obtain governmental approvals required in the plan submittal process and do not make a change to the project reviewed for such approvals.

(Ord. No. 2020-010, § I, 5-18-20)

Chapter 18 BUSINESSES[13]

ARTICLE I. OCCUPATION TAX ORDINANCE

Section 18-1. Occupation tax required; occupation tax required for business dealings in the city.

For the year 1995 and succeeding years thereafter, each person engaged in any business, trade, profession, or occupation in Commerce, Georgia, whether with a location in Commerce or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to O.C.G.A. 48-13-7, shall pay an occupation tax for said business, trade, profession, or occupation; which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in Commerce, Georgia. If the taxpayer has no permanent business location in Commerce, Georgia, such business tax registration shall be shown to the city clerk or her designee or to any police officer of said Commerce, Georgia, upon request.

(Ord. No. 94-09, 9-12-94)

Section 18-2. Construction of terms; definitions.

(a) Wherever the term "Commerce" is used herein, such term shall be construed to mean Commerce, Georgia; wherever the term city is used herein, it shall be construed to mean Commerce, Georgia.

(b) As used in this ordinance, the term:

(1) *Administrative fee* means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

(2) *Location of office* shall not include a temporary work site which serves a single customer or project.

(3) *Occupation tax* means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business for revenue raising purposes.

(4) *Regulatory fees* means payments, whether designated as license fees, permit fees, or by another name, which are required by local government as an exercise of its police power and as a part of or an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee. Development impact fees as defined by paragraph 8 of O.C.G.A. 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

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[13]Cross reference(s)—Alcoholic beverages, ch. 6; buildings and building regulations, ch. 14; environment, ch. 30; fire prevention and protection, ch. 34; floods, ch. 38; offenses and miscellaneous provisions, ch. 46; peddlers and solicitors, ch. 54; streets, sidewalks and other public places, ch. 62; taxation, ch. 70; utilities, ch. 78; vehicles for hire, ch. 82; zoning, app. A.

State law reference(s)—Authorization of cities to levy and collect taxes and fees, Ga. Const. art. 9, Section 4, par. 1; specific business and occupation taxes, O.C.G.A. § 48-13-1 et seq.

(5) *Dominant line* means the type of business, within a multiple-line business, that the greatest amount of income is derived from.

(6) *Person* shall be held to include sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization, but specifically excludes charitable nonprofit organizations which utilize 50 percent of their proceeds for charitable purposes.

(7) *Practitioner of profession or occupation* is one who by state law requires state licensure regulating such profession or occupation.

(8) *Practitioners of professions and occupations* shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(Ord. No. 94-09, 9-12-94)

Section 18-3. Administrative and regulatory fee structure; occupation tax structure.

(a) A nonprorated, nonrefundable administrative fee of $25.00 shall be required on all business and occupation tax accounts for the initial start-up, renewal, or reopening of those accounts.

(b) A regulatory fee will be imposed as provided under O.C.G.A. 48-13-9 on those applicable businesses. A regulatory fee may not include an administrative fee.

(c) The regulatory fee schedule for persons in occupations and professions is set forth as follows:

Business	Regulatory Fee
Auctioneer	$100.00 per auction
Bail Bondsman	$100.00
Carnivals, Circuses & Fairs	$100.00 per day
Firearms Dealers	$100.00
Fortunetellers/Palm Readers	$100.00
Health Clubs, Gyms & Spas	$50.00
Hotels and Motels	$100.00
Massage Parlors	$200.00
Newspaper Vending Boxes	$10.00 per box
Nursing & Personal Care Home	$150.00
Peddlers	$100.00 per day
Pawnbrokers	$200.00
Scrap Metal/Salvage Dealers	$150.00
Taxicab & Limousine Operators	$50.00 per vehicle $20.00 per operator

(Ord. No. 94-09, 9-12-94; Ord. No. 2012-008, 6-11-12)

Section 18-4. Occupation tax levied; restrictions.

(a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices in the corporate limits of the city and upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. 48-13-7 based upon the following criteria:

(1) The number of employees of the business or practitioner.

(b) Occupation tax schedule.

(1) *Number of employees.* The tax rate determined by number of employees for each business, trade, profession, or occupation is as follows and will be developed and updated from time to time by the city clerk's office. This rate is based on the maximum number of employees associated with each business.

Number of Employees		Tax Liability
1 — 10		$100.00
11 — 25		$200.00
26 — 50		$300.00
51 — 100		$400.00
101 and up	Plus $3.50/employee over 101	$600.00

(Ord. No. 94-09, 9-12-94; Ord. No. 2012-008, 6-11-12)

Section 18-5. Paying occupation tax of business with no location in Georgia.

Registration and assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no location or office in the state of Georgia if the business's largest dollar volume of business in Georgia is in Commerce and the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of Commerce for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located within the jurisdiction of Commerce.

(Ord. No. 94-09, 9-12-94)

Section 18-6. Each line of business to be identified on business registration.

The business registration of each business operated in the city shall identify the dominant lines of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the city clerk's office and that line of business being noted by the city clerk upon the business registration form which is to be displayed by the business owner.

(Ord. No. 94-09, 9-12-94)

Section 18-6.1. The number of businesses considered to be operating in the city.

Where a person conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of occupation tax.

(Ord. No. 94-09, 9-12-94)

Section 18-7. Professionals as classified in O.C.G.A. 48-13-9(c), paragraphs 1 through 18.

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

(1) The occupation tax based on number of employees.

(2) A fee of $100.00 per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per-practitioner fee applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.

(3) This election is to be made on an annual basis and must be done prior to January 1 each year.

(Ord. No. 94-09, 9-12-94)

Section 18-8. Practitioners exclusively practicing for a government.

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, instrumentalities of the United States, the state, or a municipality or county of the state shall not be required to obtain a license or pay an occupation tax for that practice.

(Ord. No. 94-09, 9-12-94)

Section 18-9. Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade, or calling. The occupation tax only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.

(Ord. No. 94-09, 9-12-94)

Section 18-10. When tax due and payable; effect of transacting business when tax delinquent.

(a) Each such occupation tax shall be for the calendar year 1995 and succeeding calendar years thereafter unless otherwise specifically provided. Said registration and occupation tax shall be payable January 1 of each year and shall, if not paid by April 15 of each year, be subject to penalties for delinquency as prescribed in this article. On any new profession, trade, or calling begun in the city in 1995 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business and a 12 percent penalty imposed.

(b) The tax registration herein provided for shall be issued by the city clerk's office and if any person, firm, or corporation whose duty it is to obtain a registration shall, after said registration or occupation tax becomes delinquent, transact or offer to transact, in Commerce, any of the kind of trade or calling subject to this ordinance without having first obtained said registration, such offender shall, upon conviction by the municipal court, be punished by a fine of not less than $100.00, or imprisonment not to exceed 30 days,

either or both in the discretion of the presiding judge. This subsection (b) shall not apply to the practice of a profession as described in O.C.G.A. § 48-18-9(c)(1)—(18).

(c) In addition to the above remedies, the city may proceed to collect in the same manner as provided by law for tax executions.

(Ord. No. 94-09, 9-12-94; Ord. No. 97-05, 7-14-97)

Section 18-11. Exemption on grounds that business is operated for charitable purposes.

No business on which a business registration or occupation tax is levied by this ordinance shall be exempt from said registration or tax on the ground that such business is operated for a charitable purpose, unless 51 percent or more of the entire proceeds from said business are devoted to such purpose.

(Ord. No. 94-09, 9-12-94)

Section 18-12. Evidence of state registration required if applicable; state registration to be displayed.

(a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia annotated shall provide evidence of proper and current state license before the city registration may be issued.

(b) Each person who is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

(Ord. No. 94-09, 9-12-94)

Section 18-13. Evidence of qualification required if applicable.

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

(Ord. No. 94-09, 9-12-94)

Section 18-14. Liability of officers and agents; registration required; failure to obtain.

All persons subject to the occupation tax levy pursuant to this ordinance shall be required to obtain the necessary registration for said business as described in this ordinance, and in default thereof the officer or agent soliciting for or representing such persons shall be subject to the same penalty as other persons who fail to obtain a registration. Every person commencing business in Commerce after January 1 of each year shall likewise obtain the registration herein provided for before commencing the same; and any person transacting, or offering to transact in Commerce, any of the kinds of business, trade, profession, or occupation without first having so obtained said registration, shall be subject to penalties provided thereof.

(Ord. No. 94-09, 9-12-94)

Section 18-15. When registration and tax due and payable; effect of transacting business when tax delinquent.

(a) Each such registration shall be for the calendar year in which the registration was obtained unless otherwise specifically provided. There is hereby imposed a penalty upon each business which fails to apply for and obtain an appropriate business registration and pay all tax and fees as provided herein before January 31st of each year, and on January 31 each year hereafter. Every person commencing business in Commerce after January 1 of each year shall obtain the registration required before commencing such business. Any person transacting or offering to transact in Commerce any business, trade, profession, or occupation without first having obtained said registration shall be subject to the penalties provided in section 18-16. Said penalties shall be in addition to all other penalties, civil and criminal herein provided; and may be collected by the remedies herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

(b) The registration herein provided for shall be issued by the city clerk's office, and if any person, firm, or corporation whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact, in Commerce, any of the kind of business, trade, profession, or occupation without having first obtained said registration, such offender shall be subject to the penalties provided thereof.

(Ord. No. 94-09, 9-12-94)

Section 18-16. Penalty of ordinance violation.

Any person violating any provisions of this ordinance shall, upon conviction before the city judge, be fined in an amount not exceeding $100.00 or imprisoned not exceeding 30 days, either or both, in the discretion of the city judge.

(Ord. No. 94-09, 9-12-94)

Section 18-17. Subpoena and arrest powers.

The Commerce Police Chief and his duly designated officers and inspectors or their successors shall be classified as deputy marshal-business inspectors with full subpoena and arrest powers in conjunction with any violation pertaining to the Business Tax Ordinance for 1995 and succeeding years.

(Ord. No. 94-09, 9-12-94)

Section 18-18. Businesses not covered by this ordinance.

The following businesses are not covered by the provisions of this ordinance but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the State of Georgia or by local law:

(1) Those businesses regulated by the Georgia Public Service Commission.

(2) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia Annotated.

(3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.

(4) Cooperative marketing associations governed by O.C.G.A. 2-10-105.

(5) Insurance companies governed by O.C.G.A. 33-8-8, et seq.

(6) Motor common carriers governed by O.C.G.A. 46-7-15.

(7) Those businesses governed by O.C.G.A. 48-5-355.

(8) Agricultural products and livestock raised in the state of Georgia governed by O.C.G.A. 48-5-356.

(9) Depository financial institutions governed by O.C.G.A. 48-6-93.

(10) Facilities operated by a charitable trust governed by O.C.G.A. 48-013-55.

(Ord. No. 94-09, 9-12-94)

Section 18-19. Occupation tax inapplicable where prohibited by law or provided for pursuant to other existing law.

An occupation tax shall not apply to a profession or business where such levy is prohibited or exempted by the laws of Georgia or the United States. This article shall not be construed to limit the city's ability to levy an occupation tax, registration fee, or regulatory fee for any business or practitioner of professions or occupations as authorized by other state laws or local ordinances and not covered by O.C.G.A. 48-13-5 to 48-13-26.

(Ord. No. 94-09, 9-12-94; Ord. No. 97-05, 7-14-97)

Section 18-20. When occupation tax due and payable.

The amount of occupation tax shall be payable to the said city, at the city clerk's office on January 1 each year and delinquent if not paid on or before January 31st each year.

(Ord. No. 94-09, 9-12-94)

Section 18-21. Payment of occupation tax by newly established businesses.

In the case of a business subject to occupation tax for a calendar year, which was not conducted for any period of time in the corporate limits of the city in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for occupation tax shall estimate the number of employees from commencing date to the end of the calendar year and such tax shall be paid. Said tax due the city shall be prorated based on a quarterly basis for any portion of the year yet remaining.

(Ord. No. 94-09, 9-12-94)

Section 18-22. More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, said business shall be required to obtain the necessary registration for each location and line and pay an occupation tax in accordance with the prevailing taxing method and tax rate for each location and line.

(Ord. No. 94-09, 9-12-94)

Section 18-23. Transfers of occupational tax certificate, personnel.

No tax certificate may be transferred from one person to another. Additions to or deletions from the ownership of a business, which do not affect the liability of the principal ownership of a business for which the certificate is issued, may be made without canceling the old occupational tax certificate and applying for a new certificate.

(Ord. No. 94-09, 9-12-94)

Section 18-24. Inspections of books and records.

In any case, the city, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made to determine the accuracy of the return as herein provided. The city shall have the right to inspect the books or records for the business of which the return was made in Commerce, Georgia, and upon demand of the city such books or records shall be submitted for inspection by a representative of the city within 30 days. Failure of submission of such books or records within 30 days shall be grounds for revocation of the tax registration currently existing to do business in the city. Adequate records shall be kept in Commerce for examination by the city at its officer's discretion.

(Ord. No. 94-09, 9-12-94)

Section 18-25. Effect of failure to comply with ordinance provisions; continuing in business after tax registration revocation.

Any persons, their managers, agents, or employees, who do business in said city after the registration for said business has been revoked as above, hereby required to make occupation tax returns, and who fail to make said returns within the time and in the manner herein provided, who refuse to amend such returns so as to set forth the truth, or who shall make false returns; and any person, their managers, agents, or employees who refuse to permit an inspection of books in their charge when the officer, agents, employees, or representatives of the city request such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties provided herein. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the local government as in the case of delinquent occupation tax. These penalties shall consist of a fine of $100.00.

(Ord. No. 94-09, 9-12-94)

Section 18-26. Lien taken for delinquent occupation tax.

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the city clerk of Commerce, Georgia, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the persons, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of 12 percent per annum from the date when such tax or installment becomes delinquent, and lien shall cover the property in the city of the person, partnership, or corporation liable for said tax, all as provided by the ordinances and charter of said city and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the police chief or other appropriate officer of said city upon the property of defendant located in said jurisdiction, and sufficient property shall be advertised and sold to pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by ordinances and charter of said city and the laws of Georgia, and the defendant in said execution

shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the city clerk's office against any person defaulting on the occupation tax, the person against who the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the taxes.

(Ord. No. 94-09, 9-12-94)

Section 18-27. Amendment, repeal provision.

This ordinance shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the mayor and council to access and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amounts of tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the jurisdiction of additional occupation taxes upon the same person, property, or business.

Section 18-28. Applications of provisions to prior ordinance.

This ordinance does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the non-payment of such tax, or for failure to pay regulatory fees provided for in said ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee, or assessment shall be fully paid.

(Ord. No. 94-09, 9-12-94)

Section 18-29. Provisions for non-payment.

Any person engaged in any business, trade, profession, or occupation in Commerce, Georgia, whether with a location in Commerce or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to O.C.G.A. 48-13-7, will not be allowed to pay an occupational tax for a new calendar year until all outstanding or delinquent balances of ad valorem taxes, regulatory fees, or any other form of taxes are paid. The non-payment of this occupational tax will prohibit an business to continue its operation until all such outstanding balances are paid.

(Ord. No. 94-09, 9-12-94)

Section 18-30. Enforcement of provisions.

It is hereby made the duty of the city clerk and/or the chief of police to see that the provisions of this ordinance relating to occupation taxes are observed; and to summon all violators of the same to appear before the court. It is hereby made the further duty of the city clerk's office, chief of police, members of the police department, and their assistants to inspect all registrations issued by the city as often as in their judgment it may seem necessary to determine whether the registration held is the proper one for the business sought to be transacted thereunder.

(Ord. No. 94-09, 9-12-94)

Section 18-31. Provisions to remain in full force and effect until changed by the mayor and council.

This ordinance shall remain in full force and effect until changed by amendment adopted by the Commerce Mayor and Council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

(Ord. No. 94-09, 9-12-94)

Section 18-32. Requirement of public hearing before tax increase.

After January 1, 1996, the mayor and council shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the rate of occupation tax as set forth in this ordinance.

(Ord. No. 94-09, 9-12-94)

Section 18-33. Option to establish exemption or reduction in occupation tax.

The mayor and council of the City of Commerce may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practi

tioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions. Such exemption or reductions in occupation tax shall not be arbitrary or capricious.

(Ord. No. 94-09, 9-12-94)

Section 18-34. Conflicts between specific and general provisions.

Where there is an apparent conflict in this ordinance between specific and general provisions, it is the intention hereof that the specific shall control.

(Ord. No. 94-09, 9-12-94)

Section 18-35. Severability.

If any section, provision, or clause of any part of this ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this ordinance would have been adopted had such invalid portion not been included herein.

(Ord. No. 94-09, 9-12-94)

Section 18-36. Repeal of conflicting provisions.

All ordinances or parts of ordinances in conflict with this ordinance, and not preserved hereby; are hereby repealed.

(Ord. No. 94-09, 9-12-94)

Section 18-37. Exemptions.

Sections 18-6, 18-14, 18-15(b), 18-16, 18-25 and 18-29 of the Code of Ordinances, City of Commerce shall not apply to the practice of a profession as described in O.C.G.A. § 48-18-9(c)(1)—(18).

(Ord. No. 97-05, 7-14-97)

Section 18-38. Enforcement and administration.

(a) The city clerk shall be responsible for the administration and enforcement of this article, and shall have the power to prepare and provide the necessary forms for the registration of a business and for the collection of the tax levied by this article.

(b) The city clerk shall issue executions for the collection of all outstanding and unpaid taxes imposed and assessed by this article. The unpaid taxes and executions shall be collected in the manner provided by law for the collection of other taxes due the city.

(Ord. of 11-18-91, § 3; Ord. No. 94-09, 9-12-94)

Section 18-39. Duties of administrator.

The administrator, or an authorized representative, shall have, among others, the following duties:

(1) All applications for occupational tax certificates shall, at a minimum, include the following: The name of the business, the address of the business, telephone contact information for the business, the applicant's Social Security number or tax identification number. Disclosure of the foregoing information is required from the application. The information contained on the application shall be used only for the purposes of determining whether to grant the application or to assist the city in collection of any delinquent occupational taxed payments. If the applicant refuses to supply the required information, the city clerk, or his designee, may reject the application.

(2) To issue to each person a occupational tax certificate within a reasonable time after the payment of the occupational tax certificate fee assessed and any business taxes, property or other city taxes levied in this Code; provided, however, where under other ordinances of the city permits, certifications, and compliance with enumerated conditions are required for the operation of the business, the administrator shall not issue a occupational tax certificate until the applicant exhibits to the administrator the obtained permits, certification or compliance.

(3) With the assistance of the administrator, one or more members of the county building inspector's office and/or the city police department shall seek out violations of this Code, particularly the occupational tax certification and regulation portions thereof, and may report such violations to the administrator. Any such violation reported to the administrator will cause such application to be delayed or denied.

(Ord. of 11-18-91, § 4; Ord. No. 94-09, 9-12-94; Ord. No. 2007-001, 1-8-07)

Section 18-40. Licensing of contractors.

(a) In addition to the general license provisions affecting the electrical, low voltage, gas, conditioned air, plumbing, and general contractors, the following regulations shall apply:

(1) No electrician or electrical contractor, plumber or plumbing contractor, conditioned air installer or conditioned air contractor, low voltage electrician or low voltage contractor shall be issued a license

unless he possesses a state license for his trade issued by the appropriate contractor's board of examiners of the state.

(2) All contractors and subcontractors shall be licensed separately.

(b) There shall be minimum liability coverage for all contractors and subcontractors doing business in the city as follows:

(1) Electrical$25,000.00

(2) Low voltage electrical15,000.00

(3) Plumbing25,000.00

(4) Gas25,000.00

(5) Conditioned air25,000.00

(6) General contractor50,000.00

(7) These minimum liability limits are required for licensing purposes only. No permit will be issued to any contractor or subcontractor without proof of liability coverage to meet or exceed the amount of the requested permitted contract.

(Ord. of 11-18-91, § 9; Ord. No. 94-09, 9-12-94)

ARTICLE II. YARD SALES

Section 18-41. Yard sale regulations.

(a) For the purposes of this section, the term "yard sale" shall refer to the occasional sale of personal property by a homeowner or tenant, or by several homeowners or tenants acting together, which is conducted on the premises of such homeowner or tenant and which is open to the public.

(b) There shall be allowed only one yard sale during a three-month period at the same location.

(c) No single yard sale shall extend for more than 48 hours in duration.

(d) No signs advertising a yard sale shall be placed on any public property nor shall any such sign be placed on private property without the express permission of the owner of such private property. All signs which are placed shall be removed by the person or by the persons operating the yard sale within 12 hours after the conclusion of the sale.

(e) Any person or persons desiring to conduct a yard sale shall obtain a permit from the city clerk no later than 4:00 p.m. the last business day prior to the date of the yard sale. The city shall charge no fees and the city clerk shall provide the permit forms.

(f) any violation of this article shall be punished as provided by section 1-12 of the City Code.

(Ord. No. 2001-002, 2-12-01; Ord. No. 2012-013, 12-10-12)

Section 18-42—18-65. Reserved.

ARTICLE III. POOL ROOM, BILLIARD ROOM, BOWLING ALLEY, GAMES AND GAME ROOM[14]

Section 18-66. Scope of article.

All persons applying for or holding a license from the city for the operation of pool or billiard rooms or bowling alleys or game rooms shall apply for and hold same subject to this article. The regulations in this article shall be in addition to those requiring the payment of an occupation tax and the holding of an occupational tax certificate to conduct business of this character in the city.

(Ord. No. 2008-017, 12-8-08)

Section 18-67. Definitions.

Billiards or pool means any of 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 games commonly know as carom billiards, pocket billiards, snooker or pool and English billiards or pool.

Billiard room and pool room means any business operated in the city, which utilizes a minimum of three billiard tables or pool tables where a person is permitted to play the game of billiards or pool and for which a charge is made for the use of the equipment.

Game machine means amusement machine such as any coin or token operated or fee-paid mechanical, electronic or other similar devices primarily manufactured for amusement and entertainment purposes.

Game room shall be defined as any business in which amusement machines, coin or token operated or fee-paid mechanical, electronic or other similar devices primarily manufactured for amusement and entertainment purposes or otherwise, are available for the entertainment of the public, and where the proceeds from the operation of said amusement machines consists of 50 percent or more of the gross revenues of said business and in which there exists more than five such machines or more than two pool or billiard tables.

Prohibited gaming machine means:

(1) Any video game machine or device operated for any consideration for the play of poker, blackjack, any other card game, keno, or any simulation or variation of any such game, including, but not limited to, any game in which numerals, numbers, or any pictures, representations, or symbols are used as an equivalent or substitute for cards in the conduct of such game;

(2) Any match-up or lineup game machine or device in which two or more numerals, symbols, letters, or icons align in a winning combination on one or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player.

Registrant shall mean any person duly registered under the provisions of this article to conduct the business of a game room or pool/billiard room in the city.

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[14]Editor's note(s)—Ord. No. 2008-017, adopted Dec. 8, 2008, deleted §§ 18-66—18-70 in their entirety and enacted new §§ 18-66—18-70 to read as set out herein. Former §§ 18-66—18-70 pertained to similar subject matter and derived from Code 1987, §§ 18-202(1), (3)—(5); and Ord. No. 97-03, § II, adopted Mar. 10, 1997.

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

Service coin-operated machine means all machines or devices, which dispense service or merchandise only and are not for skill or pleasure.

(Ord. No. 2008-017, 12-8-08; Ord. of 2-9-09)

Section 18-68.1 Gambling devices prohibited.

Gambling devices, as that term is defined in O.C.G.A. § 16-12-20(2) are prohibited in the City, and the ownership, use, or transport thereof shall be a misdemeanor pursuant to state law, except as exempted pursuant to O.C.G.A. § 16-12-35(a)—(k) and regulated by the Georgia Lottery Corporation ("GLC") pursuant to O.C.G.A. § 50-27-70 et seq.

Section 18-68.2. Gambling places prohibited.

Gambling places, as that term is defined in O.C.G.A. § 16-12-20(3) are prohibited in the City, and the operation thereof shall be a misdemeanor pursuant to state law.

Section 18-68.3. Definitions.

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

(a) *Amusement game room* means any location as provided in O.C.G.A. § 16-12-35(b), (c) or (d) where one or more bona fide coin operated amusement machines are operated that permit non-cash redemption as provided in O.C.G.A. § 16-12-35(d)(1)(B), (C), or a combination thereof.

(b) *Bona fide coin operated amusement machine* means the same as this term is defined in O.C.G.A. § 50-27-70(b)(2)(A) and (B) and any applicable regulations of the State of Georgia. Examples of bona fide coin operated amusement machines include, but are expressly not limited to, the following:

1. Pinball machines;
2. Console machines;
3. Video games;
4. Crane machines;
5. Claw machines;
6. Pusher machines;
7. Bowling machines;
8. Novelty arcade games;
9. Foosball or table soccer machines;
10. Miniature racetrack, football or golf machines;
11. Target or shooting gallery machines;
12. Basketball machines;
13. Shuffleboard machines;
14. Kiddie ride games;
15. Skee-Ball machines;
16. Air hockey machines;

17. Roll down machines;
18. Trivia machines;
19. Laser games;
20. Simulator games;
21. Virtual reality machines;
22. Maze games;
23. Racing games;
24. Coin operated pool table or coin operated billiard table as defined in O.C.G.A. § 43-8-1(3); and
25. Any other similar amusement machine which can be legally operated in Georgia.

The term "coin operated amusement machine" does not include the following:

1. Coin operated washing machines or dryers;
2. Vending machines which for payment of money dispense products or services;
3. Gas and electric meters;
4. Pay telephones;
5. Pay toilets;
6. Cigarette vending machines;
7. Coin operated scales;
8. Coin operated gumball machines;
9. Coin operated parking meters;
10. Coin operated television sets which provide cable or network programming;
11. Coin operated massage beds; and
12. Machines which are not legally permitted to be operated in Georgia.

(c) *Class B machine* shall have the same definition as found in O.C.G.A. § 50-27-70.

(d) *Location* means a business within the City that has complied with the provisions of the ordinances of the City relating to occupation taxes and business licenses and the entire office or area of the business in any one location owned or leased by the same proprietor or proprietors where the lessor or lessors allow the space to be used for business purposes.

(e) *Location owner or location operator* means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use and play by the public, or it shall have the same definition as found in O.C.G.A. § 50-27-70, should that definition differ.

(f) *Operator* means any person, individual, firm company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state, or shall have the same definition as found in O.C.G.A. § 50-27-70, should that definition differ.

(g) *Owner* means any person, individual, firm, company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state, or shall have the same definition as O.C.G.A. § 50-27-70, should that definition differ.

Section 18-68.4. License required.

No person, firm or corporation shall engage in the business of being an owner of an amusement game room without first having obtained an amusement game room license and without first having paid the applicable occupation tax and obtained an occupational tax certificate required under the Charter of the City. A separate amusement game room license must be obtained for each location in the jurisdiction which bona fide coin operated amusement machines are operated.

Section 18-68.5. Issuance of license.

Application for an annual license for operating an amusement game room within the corporate limits of the City shall be made to the City Manager or his/ her designee upon a form to be supplied by the City Manager or his/her designee for this purpose. The application for the annual registration shall include, at a minimum, the following information: (a) name, address and age of the applicant and the date of the application; (b) Address or place where the bona fide coin operated amusement machine or machines are to be offered to the public for play and the other business or businesses operated at that place or places; (c) name and address of the owner of the machine or machines and a copy of the owner's master license; (d) name and address of any other business owned or operated by applicant within the corporate limits of the City; € list of any other licenses or permits from the City held by the applicant; (e) verification of valid master license and location license in accordance with O.C.G.A. § 50-27-71(a.1) and (b); and (f) an application fee in an amount as established from time to time by the City Council.

Upon issuing a license for an amusement game room, the City official or employee shall provide the licensee with a copy of this Article. A license issued in accordance with this ordinance shall be valid until December 31 of the year in which the license was issued. The owner or operator of an amusement game room shall be required to pay occupation taxes in accordance with the Charter and Code of the City.

Section 16-68.6. Minimum distance requirements.

(a) If an amusement game room location sells or offers to sell any distilled spirits for off-premises consumption, then the amusement game room shall not be located within 200 yards of any school property or within 100 yards of any church building or alcoholic treatment center owned and operated by the state or any county or municipal government.

(b) If an amusement game room location sells or offers to sell for off-premises consumption any beer or malt beverages or wines, then the amusement game room shall not be located within 100 yards of any school property or within 100 yards of any alcoholic treatment center owned and operated by the state or any county or municipal government.

(c) At a public meeting, the Mayor and Council may waive the applicability of this provision to an individual location if no alcohol is served at such location.

Section 16-68.7. Number of bona fide coin operated amusement machines at a location.

No amusement game room in the City shall offer to the public more than six class B bona fide coin operated amusement machines at one business location within the City. At a public meeting, the Mayor and Council may, after consideration of the nature and character of the business, waive the applicability of this provision to an individual location.

Section 16-68.8. Gross receipts from bona fide coin operated amusement machines and from business.

(a) Every amusement game room shall keep records available for inspection by City officials that set out separately annual gross receipts for the class B amusement games and the other products and services sold at the location.

(b) Any location owner or location operator subject to O.C.G.A. § 50-27-84(c) is hereby required to provide a copy of the monthly verified report required by such code section to the City Clerk. For each business location located within the City, the report shall indicate: the gross receipts from the class B machines; the gross retail receipts for the business location; and the net receipts of the class B machines. The report shall be due by the twentieth day of each month, subsequent to the month in which the sales have taken place. In addition, each owner or operator must provide the City with a copy of the annual audit of the reports from the owner or operator to the Georgia Lottery Corporation.

(c) No location owner or location operator may derive more than 50 percent of such location owner's or location operator's monthly gross retail receipts for this business location in which the class B machines are situated from such class B machines. Any location owner or location operator found in violation of such provision may be cited in the Conyers Municipal Court and may be fined as set forth herein and may have any City issued license suspended or revoked as allowed under this chapter. Compliance with this section requires both the availability of records for inspection and compliance with the 50 percent of gross retail receipts requirement. Any violations of this provision shall be reported to the Georgia Lottery Corporation.

Section 16-68.9. Notice requirements.

(a) Every amusement game room shall post a conspicuous sign with dimensions of at least 11.5 inches by 17.5 inches in size with the following or substantially similar language:

"GEORGIA LAW PROHIBITS GIVING OR RECEIPT OF ANY MONEY FOR WINNING A GAME OR GAMES ON AN AMUSEMENT MACHINE; GIVING OR RECEIPT OF MONEY FOR FREE REPLAYS WON ON AN AMUSEMENT MACHINE; GIVING OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON ANY AMUSEMENT MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING $5.00 FOR A SINGLE PLAY OF AN AMUSEMENT MACHINE."

(b) Every amusement game room shall also post both the license and the occupation tax certificate issued by the City conspicuously and permanently.

(c) The owner or proprietor of each amusement game room shall inform every employee of the prohibitions and penalties set out in O.C.G.A. § 16-12-35(e), (f), and (g) and by this Article, and of the penalties for violation of O.C.G.A. § 16-12-35 and this Article.

Section 16-68.10. Compliance with O.C.G.A. provisions relating to master licenses, location licenses, and stickers for individual machines.

Bona fide coin operated amusement machines may be used in an amusement game room within the City only if the machines are owned by a person who holds a valid master license in accordance with O.C.G.A. § 50-27-71, and only if each machine offered to the public for play has a valid permit sticker in accordance with O.C.G.A. § 50-27-78. In addition, the business owner where the machines are available for play by the public must pay a location license fee in order to obtain a valid location license in accordance with O.C.G.A. § 50-27-71 (a.1) and (b). Failure to

have a valid location license will result in the license application not being processed. The City shall notify the State Commissioner of Revenue of any observed violation of O.C.G.A. § 50-27-71 or § 50-27-78.

Section 16-68.11. License suspension and revocation.

(a) The City may suspend or revoke the City issued license of any location owner or location operator to manufacture, distribute, or sell alcoholic beverages as a penalty for the conviction of the business owner or business operator of a violation of O.C.G.A. § 16-12-35(e), (f), or (g) or for a violation of any provision of Ga. Code Title 16, Chapter 12, Article 7 relating to tobacco products or for a violation of one or more provisions of this Article. Violation of any provision of this chapter may also be punished in accordance with the general penalty section of the City Charter.

(b) The City may suspend or revoke the license of any location owner or location operator of any other license granted by the City as a penalty for the conviction of the business owner or business operator of a violation of the O.C.G.A. § 16-12-35(e), (f), or (g) or for a violation of any provision of Ga. Code Title 16, Chapter 12, Article 7 relating to tobacco products.

(c) The suspension or revocation of licenses under this Code section shall be in accordance with the following guidelines of due process:

(1) No license which has been issued or which may be issued pursuant to this Article shall be suspended or revoked except for due cause and after hearing and upon prior three-day written notice to the holder of the license of the time, place and purpose of the hearing and a statement of the charges upon which the hearing shall be held, unless such hearing has been waived pursuant to stipulation as provided under Subsection (8). Such notice shall provide the reasons for the suspension or revocation sought and shall be mailed or delivered to the holder of the license.

(2) The term "due cause" for the purposes of this section shall include, but not be limited to:

(A) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any felony, any law, administrative regulation or ordinance involving alcoholic beverages, gambling or narcotics, tobacco products or tax laws.

(B) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any sex offense when the licensed business is for on-premises consumption.

(C) Suspension or revocation of any state license required as a condition for the possession, sale or distribution of alcoholic beverages or tobacco products.

(D) Material falsification of any fact given in an application for a license issued under this chapter or bearing upon the licensee's qualification therefor. Any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this chapter shall be deemed a violation of the requirement attempted to be circumvented.

(E) Failure to meet or maintain any standard prescribed by this chapter as a condition or qualification for holding a license.

(F) Any other factor known to or discovered by the City whereby it is objectively shown the licensee, any of the licensee's employees or any person holding an interest in a license, has engaged in conduct at or involving the licensed business or has permitted conduct on the licensed premises that constitutes a violation of federal or state law, local ordinance or administrative regulations involving alcoholic beverages, gambling or narcotics for all alcohol licensed businesses and including any sex offense under state law or local ordinances with respect to businesses licensed for on-premises consumption.

With respect to this section, it shall be rebuttably presumed that the violative act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aid in such occurrence, or in the exercise of full diligence that such licensee could not have discovered or prevented such activity.

(3) Notice of suspension or revocation proceedings shall be served on the person named as licensee in the application. Notice shall be in writing. The notice may be served personally or by first class mail. If by mail, the notice shall be addressed to the licensee at its address as provided by the licensee to the municipality. The burden shall be on the licensee to provide notice, in writing, of any change of address for service of notices and process. In the case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Postal Service.

(4) The hearing shall be conducted by a hearing officer appointed by the City Manager. The hearing officer shall be an attorney licensed to practice in the state who is disinterested in the proceeding.

(5) Hearings shall be only as formal as necessary to preserve order and shall be compatible with the principles of justice. The City Solicitor shall present the City's case and bear the burden of proving by a preponderance of the evidence that due cause exists to suspend or revoke the license. At the hearing, the licensee shall have the right to represent itself or be represented by counsel, may cross examine all witnesses offered by the City, and may call witnesses and present evidence in its own behalf. Formal rules of evidence shall not apply to hearings under this section, although the hearing officer shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation.

(6) The hearing officer shall make his final determination within ten business days of the completion of the hearing. The decision shall be placed in writing and contain the hearing officer's findings of fact, conclusions of law, and decision as to sanction, if any. Such sanction may include one or more of the following: revocation of the license, suspension of the license for no more than 12 months, imposition of a probationary period not to exceed 12 months, and/or a civil monetary penalty not to exceed the amount allowed under the City's Charter. Progressive sanctions, depending on the severity of the violation, are encouraged but not required. Where the remaining term of the license is less than 12 months, imposition of suspension or probation for a period in excess of the term of the existing license shall be applied to any renewal license. A subsequent violation within a probationary period shall be cause for revocation and/or denial of license renewal. A total of three separate and unrelated violations within 24 months, whether or not within a probationary period, shall be grounds for permanent revocation.

(7) The hearing officer's decision shall be personally served or mailed by certified mail, return receipt requested to the licensee and his attorney, with a copy to the City Solicitor, within ten business days of the close of the hearing. The decision of the hearing officer shall constitute final action by the City, subject to review upon petition for certiorari to the County Superior Court.

(8) Upon receipt of notice of adverse action against the licensee under this section, the licensee may waive its right to a hearing and stipulate to a sanction, as recommended by the City Manager, in consultation with the Chief of Police. Any stipulation entered under this subsection shall be in writing, signed by the licensee, and non-appealable.

Section 16-68.12. Criminal penalties for violations by owners or operators of amusement game rooms.

(a) Penalties for violation of the provisions of this Article by the owner or operator of an amusement game room, after conviction in the City Municipal Court, or other court of competent jurisdiction are as follows:

(1) *First offense*. Base fine not to exceed $500.00 for each violation.

(2) *Second offense*. Base fine not to exceed $750.00 for each violation, and the suspension of the owner or operator's license for offering any amusement game at the location for not more than three months, or both.

(3) *Third offense*. Base fine not to exceed $1,000.00 for each violation, the suspension or permanent revocation of the owner or operator's license for offering any amusement game at the location, or suspension of other permits and licenses granted by the City for not more than six months, or any combination of these penalties.

(b) The fines listed in the penalties for violation of this chapter may be imposed by the judge of the municipal court of the city, or the judge of any other court of competent jurisdiction. The suspension or revocation of the owner or operator's license for offering any amusement game at the location where the violation occurred, and the suspension of other permits and licenses granted by the City may be imposed by the Mayor and Council after a public hearing as described in Section 18-68.11 of this Article.

(c) Offering one or more bona fide coin operated amusement machine games in violation of an order suspending or revoking the license for the offering of any amusement game at the location is punishable, after conviction in the City Municipal Court, by a fine not to exceed $1,000.00, imprisonment not to exceed six months, or both such fine and imprisonment.

Section 16-68.13. Penalties for violations by those who play bona fide coin operated machines in violation of law or ordinance.

The City Municipal Court, or any other court of competent jurisdiction, is authorized to impose the following penalties on any person convicted of receiving money as a reward for the successful play or winning of any bona fide coin operated amusement machine from any person owning, possessing, controlling or overseeing such bona fide coin operated amusement machine or any person employed by or acting on behalf of a person owning, possessing, controlling or overseeing a bona fide coin operated amusement machines:

(a) *First offense*. Fine not to exceed $250.00 for each violation.

(b) *Second offense*. Fine not to exceed $500.00 for each violation.

(c) *Third and subsequent offenses*. Fine not to exceed $1,000.00 for each violation.

Section 16-68.14. Operating regulations.

All businesses operating as an amusement game room hereunder shall be subject to the following regulations:

(a) *Devices to be kept in plain view; gambling devices prohibited.* All bona fide coin operated amusement machines shall at all times be kept and placed in plain view of and open and accessible to any person(s) who may frequent or be in any place of business where such machines are kept or used. Nothing in this section shall be construed to authorize, permit or license any gambling device of any nature whatsoever. To satisfy the "plain view" requirements of this section, all bona fide coin operated amusement machines shall be visible from the main entryway of the location. No bona fide coin operated amusement machine shall be located behind a doorway, in a back room, in a side room, or in any other location that is not in "plain view" as defined by this section.

(b) *Inspection*. The chief of police or his/her designee may inspect or cause the inspection of any location in which any such bona fide coin operated amusement machine(s) are operated or set up for operating, and may inspect, investigate and test such machines as needed.

(c) *Attendant required*. It shall be unlawful for any location owner or location operator to open the location to the public unless an attendant is present. Said attendant shall be of sufficient mental and physical capacity so

as to be able to provide aid to patrons if needed or desired. Said attendant shall not be less than 18 years of age.

(d) *Loitering*. As used in this section, "loitering" shall mean remaining idle in essentially one location and shall include the concepts of spending time idly, loafing or walking about aimlessly, and shall be unlawful for any person, firm or corporation licensed to operate an amusement game room to permit loitering on or in the immediate vicinity of any machine or business premises regulated hereunder in such a manner as to:

(1) Create or cause to be created a danger of a breach of the peace;

(2) Create or cause to be created any disturbance of the peace, as defined by law;

(3) Obstruct the free passage of pedestrians or vehicles; or

(4) Obstruct, molest or interfere with any person lawfully in a public place.

(e) *Shirt and shoes required*. All location owners and location operators shall require shirts and shoes to be worn at all times by any person frequenting their location.

Section 16-68.15. Security cameras required.

(a) Any party holding a license pursuant to this chapter is required to install a continuous video recording system dedicated to each area dedicated to the bona fide coin operated amusement machines with cameras and lens of a type, number and location approved by the Chief of Police or his/her designee. Such camera(s) must be capable of producing a retrievable and identifiable image on film, tape or electronic video that can be made a permanent record and that can be enlarged through projection or other means.

(b) Cameras meeting the requirements of this section shall be maintained in proper working order at all times and shall be in operation during all hours in which such establishment is open for business. The camera footage shall have a 30-day retention period. The camera shall be subject to monthly inspection by the Chief of Police or his/her designee, and establishments must have immediate availability of a back-up camera system in the event the primary system becomes inoperable. If a crime occurs or if any employee believes a crime has occurred, the Commerce Police Department shall be contacted immediately, and the camera footage shall be retrieved by a designated police officer.

(c) Every amusement game room shall post a conspicuous sign in each area dedicated to the bona fide coin operated amusement machines with dimensions of at least 11.5 inches by 17.5 inches in size with the following or substantially similar language:

“THIS AREA IS UNDER VIDEO SURVEILLANCE”

Section 16-68.16. Licenses and permits nontransferable.

(a) Licenses required in this chapter are nontransferable. All businesses that have bona fide coin operated amusement machines on their premises shall display, in plain view, the current amusement game room license and occupational tax certificate issued by the City.

(b) The issued amusement game room license shall not be transferred to another owner at the same site within the City. A new owner or proprietor must first obtain a new amusement game room license if they are going to operate in the same or different location in the City.

Section 16-68.17. Enforcing officer.

The Chief of Police or his designee is hereby designated as the enforcement officer and shall execute all requirements of this chapter.

(Ord. No. 2008-017, 12-8-08; Ord. of 2-9-09)

Section 18-69. Reserved.

Editor's note(s)—An ordinance adopted Feb. 9, 2009, deleted § 18-69 in its entirety. Former § 18-69 pertained to regulatory fees and derived from Ord. No. 2008-017, adopted Dec. 8, 2008.

Section 18-70. Billiard rooms, pool rooms, and bowling alleys.

(a) *Application.* An application for a billiard room, pool room or bowling alley license shall be sworn to and filed with the city clerk's office. The police department shall conduct an investigation of the owner(s) and on site managers and upon completion of such investigation, the city clerk shall forward said application to the city council for their consideration of a license for the designated location in accordance with this code if it is determined that:

(1) The application meets all the requirements of this chapter and other provisions of the City Code;

(2) The applicant has not knowingly made a material misrepresentation in the application;

(3) The applicant has completed and passed a background investigation with the police department;

(4) The applicant, if an individual, or the officers and directors, if the applicant is a company or corporation, or the partners, including limited partners, if the applicant is a partnership has not been convicted or pled guilty to any crime involving moral turpitude within a period of five years immediately prior to the date of application for the license;

(5) The building, structure or location of such business as proposed by the applicant would comply with all applicable zoning and building code distance laws;

(6) That the grant of such license will not cause a violation of this chapter or any other ordinance or regulation of the city, state, or the United States;

(7) The applicant has not had a billiard room, pool room or bowling alley license or other similar license or permits previously suspended or revoked within the last three years;

(8) The applicant is of good moral character and has not been found guilty of any felony crime(s) related to children; and

(9) The number of billiard or pool tables or other mechanical devices or game machines in the premises to be permitted;

(b) *Scope of article.* All persons applying for or holding a license from the city for the operation of billiard or pool rooms or bowling alleys shall apply for and hold same subject to this article.

(c) *View of premises.* Every billiard room, pool room, and bowling alley room shall be open to the common public, in accordance with the laws of this state. No part of the room shall be concealed from other parts for the operation of tables or alleys; that is, no participants shall be permitted in an enclosed room to utilize private tables or alleys also, each establishment licensed under this article shall have a public telephone in operation on the premises. Each establishment under this article shall maintain sufficient lighting and

visibility as to reveal the interior of the establishment at all times from the front sidewalk or street on which the establishment is located.

(d) *Disorderly conduct.* Any disorder allowed by the owner or manager to arise within the premises of a billiard room, pool room or bowling alley shall be sufficient cause for the license to be revoked and the establishment closed. The operator and owner of the establishment shall not be granted a license to operate the same or any similar establishment for a period of three years from the date of such revocation.

(e) *Gambling.* No gambling of any kind shall be permitted upon the premises of billiard rooms, pool room or bowling alleys.

(f) *Hours of operation.* The hours of operation of billiard and or pool rooms and bowling alleys shall be from 8:00 a.m. to 12:00 midnight.

(g) *Separate license required to serve alcoholic beverages.* It shall be unlawful for the owner or operator of any establishment licensed under the provisions of this section to permit any alcoholic beverages from being brought upon or kept upon the premises of the licensed establishment without first obtaining a license to permit the consumption of alcoholic beverages on the premises.

(h) *Sale of alcoholic beverages.* It is prohibited to sell alcoholic beverages by the drink for consumption on the premises of a billiard room, pool room or a bowling alley unless the establishment derives at least 50 percent of its gross revenue from the sale of products or services other than alcoholic beverages. The establishment shall submit quarterly reports to the city clerk on forms designed by the clerk for such purpose. Failure to make such reports or failure to meet the revenue requirements shall constitute grounds for revocation of the alcoholic beverage license and shall also be punishable under section 1-12 of the City Code of the City of Commerce.

(i) *Restriction on minors.* It shall be unlawful for any person operating or managing a billiard room or pool room within the city to permit persons under 18 years of age, unless accompanied by a parent or guardian, to enter the licensed premises of the billiard room or pool room if the establishment also holds an alcoholic beverage license for consumption on the premises.

(j) *Fees.* The annual regulatory fee for a billiard room, pool room or bowling alley shall be $300.00 and there shall be paid, in addition thereto, a regulatory fee in the amount of $50.00 for each billiard table, pool table or bowling lane utilized at any time during the calendar year. Said regulatory fees shall not be prorated or transferred to any other owner, table, or lane. Any change-out, replacement, or upgrade of a table or bowling lane shall constitute an additional regulatory fee for the new replacement machine.

(Ord. No. 2008-017, 12-8-08)

Section 18-71. Hours of operation.

The hours of operation of pool and/or billiard rooms and bowling alleys shall be from 6:00 a.m. to 12:00 midnight.

(Code 1987, § 18-202(6); Ord. No. 97-03, § I, 3-10-97)

Section 18-72. Sale of alcoholic beverages.

It is prohibited to sell alcoholic beverages by the drink for consumption on the premises of a billiard room, pool room or a bowling alley unless the establishment derives at least 75 percent of its monthly revenue from the sale of products or services other than alcoholic beverages. The establishment shall submit monthly reports to the city clerk on forms designated by the city clerk for such purpose. Failure to make such reports shall constitute

grounds for revocation of the alcoholic beverage license and shall also be punishable under section 1-12 of the City Code of Commerce, Georgia.

(Ord. No. 97-03, § III, 3-10-97)

Section 18-73—18-90. Reserved.

ARTICLE IV. PRECIOUS METALS DEALERS[15]

Section 18-91. Payment of license fee.

Every person dealing in, buying or selling gold, silver or precious metals within the city shall pay the same special license fee as that established for pawn brokers.

(Code 1987, § 18-203(2))

Section 18-92. Fingerprints and photographs of applicant and employees.

There shall be attached to the application of an applicant for a license under this article a photograph and a fingerprint record of the applicant and all persons who will or may operate the dealership in the city. Such photograph and fingerprint record must be obtained at the police department, where facilities shall be available, and the appropriate police official shall deliver the photographs and fingerprint records to the city manager for attachment to the license application.

(Code 1987, § 18-203(1))

Section 18-93. Records required—General contents.

Every dealer in gold, silver or precious metals shall maintain a book in permanent form in which shall be entered in legible English at the time of each transaction or purchase a record thereof which shall contain the following information:

(1) The date of transaction.

(2) The name of the person conducting the transaction.

(3) The name, date of birth, address of the customer, and general appearance of the customer and a distinctive number from a valid driver's license, other similar identification card, or a photograph of the customer.

(4) An identification and description of the purchased and pledged goods, including any distinctive markings, numbers or initials.

(5) The signature of the customer.

(Code 1987, § 18-203(3))

[15]State law reference(s)—Duties of purchasers of gold bullion, gold dust, etc., O.C.G.A. § 12-4-120 et seq.; junk dealers, O.C.G.A. § 43-22-1 et seq.; dealers in precious metals and gems, O.C.G.A. § 43-37-1 et seq.; dealers in used watches, O.C.G.A. § 43-49-1 et seq.; jeweler's lien for repairs, O.C.G.A. § 44-14-430 et seq.

Section 18-94. Same—Preparation, inspection, disposal.

Entries in the dealer's records required in this article shall appear in chronological order in ink. There shall be no blank lines between entries. Corrections must be made by drawing a permanent line through the transaction without destroying its legibility. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or at any reasonable time. This record must be maintained for at least one year.

(Code 1987, § 18-203(4))

Section 18-95. Punishment.

Violation of any provision of this article which shall continue after written notice from the city shall be punished as provided in section 1-12.

(Code 1987, § 18-203(5))

Section 18-96. Retention of goods.

Every person dealing in buying or selling gold, silver or precious metals who takes such goods or buys such goods, taking full title thereto, shall hold such goods so taken or purchased for at least ten days before disposing of same by sale, transfer, shipment, removal from the city limits or otherwise. During said ten-day period such goods shall be made available for inspection by City of Commerce Police officers. This section cannot be waived by contract but it does not apply and is not intended to cover purchases from reputable wholesale supply houses and manufacturers.

(Ord. No. 2010-015, 10-11-10)

Section 18-97—18-115. Reserved.

ARTICLE V. PAWNBROKERS[16]

Section 18-116. 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:

Pawnbroker means any person with whom property is deposited as security for the permit of a debt.

(Code 1987, § 18-201(1))

Section 18-117. Shop operated with other business.

When a pawnbroker shop is operated in conjunction with another business, the hours as set forth in section 18-123 shall not apply. When operating a pawnbroker business in conjunction with another business, the opening and closing hours shall be the same as with the other business; provided however, that such closing hour shall in

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

any event be no later than 10:00 p.m. However, no pawnbroker may open his place of business or transact any business therein on Sunday.

(Code 1987, § 18-201(3))

Section 18-118. Weekly report; false statements.

All pawnbrokers shall make a correct and truthful weekly report, in writing, on Monday of each week to the chief of police at his office in the police department, wherein he shall supply the information required by section 18-125, pertaining to all property sold or pledged to them during the previous week. Such report shall be signed by the pawnbroker making such report. Any pawnbroker making any willfully false or misleading statements in such report shall be punished as provided in section 1-12.

(Code 1987, § 18-201(4))

Section 18-119. Transaction with minors.

No pawnbroker shall receive any article in pawn or purchase any article for resale from any person under 18 years of age.

(Code 1987, § 18-201(5))

Section 18-120. Penalties.

Any pawnbroker or person running a pawnshop who violates the provisions of this article shall be punished as provided by section 1-12, and in addition the municipal court judge or the city council may also, on proper proof, revoke the license of any pawnbroker violating the provisions of any law or ordinance pertaining to pawnbrokers.

(Code 1987, § 18-201(6))

Section 18-121. Premises open to police.

It shall be the duty of every pawnbroker to admit to his premises the chief of police or any other police officer who may desire at any time to search for articles missing or stolen, or to make any inspection authorized by this article, without the formality of a search warrant.

(Code 1987, § 18-201(7))

Section 18-122. Inspection of pledges and purchases.

All articles pledged or sold to pawnbrokers shall, at all times, be subject to inspection and examination by the police.

(Code 1987, § 18-201(8))

Section 18-123. Business hours.

No pawnbroker shall open his place of business or conduct any business therein between the hours of 6:00 p.m. and 8:00 a.m.; provided, however, that such a place of business may remain open until 6:30 p.m. on Fridays and until 8:00 p.m. on Saturdays.

(Code 1987, § 18-201(9))

Section 18-124. Display of pledges.

Every pawnbroker shall have his pledges openly displayed so that the inspection authorized by this article may be easily made.

(Code 1987, § 18-201(10))

Section 18-125. Records—Generally.

Every pawnbroker shall maintain a book, in permanent form, in which shall be entered in legible English at the time of each loan, purchase or sale:

(1) The date of transaction;

(2) The name of the person conducting the transaction;

(3) The name, age and address of the customer, a description of the general appearance of the customer; and the distinctive number from the customer's driver's license or other similar identification card;

(4) An identification and description of the pledged or purchased goods, including, if reasonably available, the serial, model or other number, and all identifying marks inscribed thereon;

(5) The number of the receipt or pawn ticket;

(6) The price paid or the amount loaned;

(7) The number of the check issued for the purchase price or loan if payment is made by check;

(8) The maturity date of the transaction; and

(9) The signature of the customer.

(Code 1987, § 18-201(11))

Section 18-126. Same—Receipt.

A receipt providing all of the information specified in section 18-125 shall be signed and a copy given to the person pledging or selling property.

(Code 1987, § 18-201(12))

Section 18-127. Same—Inspection.

The records required to be kept by section 18-125 shall be subject to inspection and examination by the police during the business hours and when the proprietor or any of his agents or employees are present.

(Code 1987, § 18-201(13))

Section 18-128. Same—When entries made.

The entries required by section 18-125 shall be made as soon after the transaction as is possible and, in no event, more than one hour thereafter.

(Code 1987, § 18-201(14))

Section 18-129. Same—False entries.

It shall be unlawful for any person engaged in the business of a pawnbroker or his clerk, agent or employee to make any false entry in any books kept as required by section 18-125.

(Code 1987, § 18-201(15))

Section 18-130. Retention of goods.

Any pawnbroker or person operating under a pawnbroker's license who takes goods on pawn or buys goods, taking full title thereto, the goods being used in the broadest sense and including all kinds of personal property, shall hold such goods so taken in pawn or purchased for at least ten days before disposing of the same by sale, transfer, shipment or otherwise. This section cannot be waived by contract, but it does not apply and is not intended to cover purchases from reputable wholesale supply houses and manufacturers.

(Code 1987, § 18-201(16))

Section 18-131—18-150. Reserved.

ARTICLE VI. JUNK DEALERS[17]

Section 18-151. Police inspections.

All persons operating junk shops, yards and all such dealers who are issued a license for same shall accept the license on condition that their places of business shall be subject to visitation and inspection by the police of the city at any time, and on refusal of the dealer or person in charge of the place of business, it shall be closed at once on order of the licensing authorities.

(Code 1987, § 18-210)

Section 18-152—18-170. Reserved.

ARTICLE VII. ELECTRIC SUPPLIERS

Section 18-171. Gross receipts business tax established; verified statement of revenues to be filed.

Each electric supplier (including specifically electric membership corporations whether or not operated for profit), within the meaning of O.C.G.A. § 46-3-1, et seq., distributing and selling electric power within the city

[17]State law reference(s)—Junk or metal dealers records, O.C.G.A. § 10-1-350 et seq.; purchase and resale of used motor vehicles and used parts, O.C.G.A. § 40-4-40 et seq.; junk dealers, O.C.G.A. § 43-22-1; Used Motor Vehicle Dismantlers, Rebuilders and Salvage Dealers Registration Act, O.C.G.A. § 43-48-1 et seq.

which is not otherwise paying a franchise fee pursuant to a franchise agreement, and whether or not said electric supplier has, operates and maintains offices within the city shall pay a gross receipts tax at the rate of four percent on any and all gross revenue derived from distribution and sale of electric power to their customers, members, or purchasers within the city, according to the verified statement of said gross revenues which shall be submitted by said electric supplier at the time said taxes are paid. This gross receipts business tax is levied pursuant to authority granted the city in Section 6.12 of the Commerce City Charter.

(Ord. No. 95-01, § 1, 2-13-95)

Section 18-172. Taxes payable monthly; taxes to be in lieu of certain other taxes.

The taxes hereinbefore set out in this article, shall be due and payable to the city on the twentieth day of each month, calculated on gross revenues billed for the immediately preceding month; also, the percentage of said gross revenues hereinbefore prescribed to be collected shall be in lieu of all other license and business or occupation taxes, but shall not at any time be considered to interfere with, or in any way prevent the collection of ad valorem taxes upon the property of said electric supplier in the same manner as all other property, real and personal, in the city is taxed.

(Ord. No. 95-01, § 1, 2-13-95)

Section 18-173. Electric service within the city.

Electric suppliers distributing and selling electric power within the city, and which do not have a franchise agreement with the city, do not acquire any additional rights by the payment of the tax herein levied under this article other than those rights granted under the Georgia Electric Territorial Service Act.

(Ord. No. 95-01, § 1, 2-13-95)

Section 18-174. Enforcement and administration.

(a) The city manager shall be responsible for the administration and enforcement of this article, and shall have the power to prepare and provide the necessary forms and for the collection of the tax herein levied.

(b) The city clerk shall issue executions for the collection of all outstanding and unpaid taxes imposed and assessed by this article. The unpaid taxes and executions shall be collected in the manner provided by law for the collection of other taxes due the city.

(Ord. No. 95-01, § 1, 2-13-95)

Section 18-175—18-209. Reserved.

ARTICLE VIII. ADULT ENTERTAINMENT ESTABLISHMENTS[18]

[18]Editor's note(s)—Provisions enacted by Ord. No. 96-001, adopted Jan. 8, 1996, as § 32-210 have been redesignated and included herein at the discretion of the editor as § 18-210.

Section 18-210. Adult entertainment.

(1) *Purpose.* The purpose of this section is to regulate certain types of businesses including, but not limited to, adult entertainment establishments, to the end that the many types of criminal activities frequently engendered by such businesses will be curtailed. However, it is recognized that such regulation cannot de facto approach prohibition. Otherwise, a protected form of expression would vanish. As to adult dance establishments, this section represents a balancing of competing interests: reduced criminal activity and protection of the neighborhoods through the regulation of adult entertainment establishments versus the protected rights of adult entertainment establishments and patrons.

(2) *Definitions.* The following terms used in this section defining adult entertainment establishments shall have the meanings indicated below:

(a) *Adult bookstore* means an establishment having a substantial or significant portion of its stock in trade, books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such materials or five percent of its net sales consisting of printed materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(b) *Adult cabaret* means an adult entertainment facility, or that part of an adult entertainment facility, which regularly features or otherwise offers to the public, customers or members, into a viewing area which is designed for occupancy by more than five persons, any live exhibition, performance or dance by a person or persons whose exhibition, performance or dance is characterized by the exposure of any specified anatomical area, or by specified sexual activities, or who otherwise appear unclothed or in such attire, costume or clothing so as to expose to view specified anatomical areas.

(c) *Adult dancing establishment* means a business that features dancers displaying or exposing specified anatomical areas.

(d) *Adult hotel or motel* means a hotel or motel wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(e) *Adult massage parlor* means a sexually oriented commercial enterprise whose major business is the offering, for any form of consideration, of a service of rubbing, kneading, or striking of the customer's body in a way which is intended to provide sexual stimulation or sexual gratification to the customer.

(f) *Adult minimotion picture theater* means an enclosed building with a capacity of less than 50 persons used for commercially presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(g) *Adult motion picture arcade* means any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(h) *Adult motion picture theater* means an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(i) *Adult video store* means an establishment having a substantial or significant portion of its stock in trade, video tapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising five percent of its total floor space, devoted to the sale or display of such material or which derives more than five percent of its net sales from videos which are characterized or distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(j) *Encounter center* means any business, agency or person who, for any form of consideration or gratuity, provides a place where two or more persons may congregate, assemble or associate for the primary purpose of engaging in, describing or discussing specified sexual activities, or exposing specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

(k) *Erotic dance establishment* means a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, go-go dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(l) *Escort bureau; introduction services* means any business, agency or persons who, for a fee, commission, hire, reward or profit, furnish or offer to furnish names of persons, or who introduce, furnish or arrange for persons who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

(m) *Good moral character* means a person that is of good moral character according to this section if that person has not been convicted of a felony, or any crime not a felony if it involves moral turpitude, in the past five years. The city may also take into account such other factors as are necessary to determine the good moral character of the applicant or employee. Conviction shall include pleas of nolo contendere or bond forfeiture when charged with such crime.

(n) *Minor* means, for the purposes of this section, any person who has not attained the age of 18 years.

(o) *Specified sexual activities* means and shall include any of the following:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
2. Clearly depicted human genitals in a state of sex stimulation, arousal or tumescence; or
3. Use of human or animal ejaculation, sodomy, or copulation, coitus or masturbation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, fondling or other sexual contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation.

(p) *Specified anatomical areas* shall include any of the following:

1. Less than completely and opaquely covered human genitals or pubic region; buttocks; or female breast below a point immediately above the top of the areola; or

2. Human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

(3) *Erotic dance establishment regulations.*

(a) No person, firm, partnership, corporation or other entity shall advertise or cause to be advertised an erotic dance establishment without a valid adult entertainment establishment license issued pursuant to this section.

(b) No later than March first of each year, an erotic dance establishment licensee shall file a verified report with the license officer showing the licensee's gross receipts and amounts paid to dancers for the preceding calendar year.

(c) An erotic dance establishment licensee shall maintain and retain for a period of two years the names, addresses and ages of all persons employed as dancers.

(d) No adult entertainment establishment licensee shall employ or contract with as a dancer a person under the age of 18 years or a person not licensed pursuant to this section.

(e) No person under the age of 18 years shall be admitted to an adult entertainment establishment.

(f) An erotic dance establishment may be open only between the hours of 8:00 a.m. and 1:00 a.m. Monday through Friday, and Saturday from 8:00 a.m. through 1:00 a.m. on Sunday. No licensee shall permit his or her place of business to be open on the 25th of December.

(g) No erotic dance establishment licensee shall serve, sell, distribute or suffer the consumption or possession of any malt or vinous beverages, intoxicating liquor or any other alcoholic beverage, or controlled substance upon the premises of the licensee.

(h) An adult entertainment establishment licensee shall conspicuously display all licenses required by this section.

(i) All dancing shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.

(j) No dancing shall occur closer than ten feet to any patron.

(k) No dancer shall fondle or caress any patron, and no patron shall fondle or caress any dancer.

(l) No patron shall directly pay or give any gratuity to any dancer.

(m) No dancer shall solicit any pay or gratuity from any patron.

(n) All areas of an establishment licensed hereunder shall be fully lighted at all times patrons are present. Full lighting shall mean illumination equal to three and five tenths (3.5) foot candles per square foot.

(o) If any portion or subparagraph of this section or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder or application to other persons or circumstances shall not be affected.

(4) *Certain activities prohibited.* No person, firm, partnership, corporation or other entity shall publicly display or expose or suffer the public display or exposure, with less than a full opaque covering, or any portion of a person's genitals, pubic area or buttocks in a lewd and obscene fashion.

(5) *Permit required.* It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on in or upon any premises within the City of Commerce any of the adult entertainment establishments defined in this section without a permit so to do. No permit so issued shall condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State of Georgia or the United States.

(6) *Operation of unlicensed premises unlawful.* It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, adult minimotion picture theater, adult hotel or motel, adult motion picture arcade, cabaret, encounter center, escort bureau or adult business or adult dancing establishment unless such business shall have a currently valid license or shall have made proper application for renewal within the time required thereof under this section, which license shall not be under suspension or permanently or conditionally revoked.

(7) *Admission of minors unlawful.* It shall be unlawful for a licensee to admit or permit the admission of minors within a licensed premises.

(8) *Sales to minor unlawful.* It shall be unlawful for any person to sell, barter or give or offer to sell, barter or give to any minor any service, material, device or thing sold or offered for sale by an adult bookstore, adult motion picture theater, adult massage parlor, or adult dancing establishment or other adult entertainment facility.

(9) *Location.* No adult business or use restricted hereunder shall be located:

(a) Within 1,000 feet of any parcel of land which is either named or used for residential uses or purposes;

(b) Within 1,000 feet of any parcel of land upon which a church, school, governmental building, library, civic center, public park or playground is located;

(c) Within 1,000 feet of any parcel of land upon which another establishment regulated or defined hereunder is located;

(d) Within 1,000 feet of any parcel of land upon which any other establishment selling alcoholic beverages is located;

(e) On less than three acres of land containing at least 100 feet of road frontage.

For the purposes of this section, distance shall be by airline measurement from property line, using the closest property lines of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

(10) *Adult entertainment establishment employees.*

(a) *Qualifications.* Employees of an adult entertainment establishment shall not be less than 18 years of age. Every employee must be of good moral character as defined in this section. Any employee who is convicted of a crime constituting a felony or a crime not a felony involving moral turpitude while employed as an adult entertainment establishment employee shall not thereafter work on any licensed premises for a period of five years from the date of such conviction, unless a longer time is ordered by a court of competent jurisdiction. The term "convicted" shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime, and the terms "employed on the licensed premises" and "work on any licensed premises" shall include as well work done or services performed while in the scope of employment elsewhere than on the licensed premises.

(b) *Approval for employment.* Before any person may work on a licensed premises, he or she shall file a notice with the licensing officer of his or her intended employment on forms supplied by the licensing officer and shall receive approval of such employment from the licensing officer. The prospective employee shall supply such information as the licensing officer requires; including a set of fingerprints, on regular City of Commerce or United States Department of Justice forms. Upon approval, the employee may begin working on the licensed premises. If approval is denied, the prospective employee may, within ten days of said denial, apply to the licensing officer for a hearing. The decision of the licensing officer after hearing may be appealed to the city council which may issue such order as is proper in the premises. An investigation fee of $50.00 shall accompany the notice of intended

employment or a receipt of the licensing officer evidencing the payment of such fee at the time the notice is filed.

(c) *Suspension, revocation of license.* Violation of the provisions of this Code, the ordinances of the City of Commerce, laws and regulations of the State of Georgia, or the rules and regulations of the city shall subject an employee to suspension or revocation of license.

(d) *Independent contractors.* For the purpose of this section, independent contractors shall be considered as employees and shall be licensed as employees, regardless of the business relationship with the owner or licensee of any adult entertainment establishment.

(11) *Application for permit.*

(a) Any person, association, partnership or corporation desiring to obtain a permit to operate, engage in, conduct or carry on any adult entertainment establishment shall make application to the city administrator or his or her designated representative. Prior to submitting such application, a nonrefundable fee, established by resolution of the city council, shall be paid to the city clerk/treasurer to defray, in part, the cost of investigation and report required by this section. The city clerk/treasurer shall issue a receipt showing that such application fee has been paid. The receipt or a copy thereof shall be supplied to the city administrator at the time such application is submitted.

(b) The application for permit does not authorize the engaging in, operation of, conduct of or carrying on of any adult entertainment establishment.

(12) *Application contents.* Each application for an adult entertainment establishment permit shall contain the following information:

(a) The full true name and any other names used by the applicant;

(b) The present address and telephone number of the applicant;

(c) The previous addresses of the applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence at each;

(d) Acceptable written proof that the applicant is at least 18 years of age;

(e) The applicant's height, weight, color of eyes and hair, and date and place of birth;

(f) Two photographs of the applicant at least two inches by two inches taken within the last six months;

(g) Business, occupation or employment history of the applicant for the five years immediately preceding the date of application. Business or employment records of the applicant, partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the shares of corporate stock outstanding;

(h) The business license history of the applicant and whether such applicant, in previous operations in this or any other city, state or territory under license, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(i) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such convictions;

(j) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors, and each stockholder holding more than five percent of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the

county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant, corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required of an individual applicant under this section, but only one application fee shall be charged;

(k) The names and addresses of the owner and lessor of the real property upon which the business is to be conducted and a copy of the lease or rental agreement;

(l) Such other identification and information as the police department may require in order to discover the truth of the matters hereinbefore specified as required to be set forth in the application;

(m) The age and date of birth of the applicant, of any partners, or of any and all officers, of any stockholders of more than five percent of the shares of the corporation stock outstanding, directors of the applicant if the applicant is a corporation;

(n) If the applicant, any partners or any of the officers or stockholders holding more than five percent of the outstanding shares of the corporation, or the directors of the applicant if the applicant is a corporation, have ever been convicted of any crime constituting a felony, or any crime not a felony involving moral turpitude, in the past five years and, if so, a complete description of any such crime, including date of violation, date of conviction, jurisdiction and any disposition, including any fine or sentence imposed and whether terms of disposition have been fully completed;

(o) The city shall require the individual applicant to furnish fingerprints of the applicant;

(p) If the applicant is a person doing business under a trade name, a copy of the trade name properly recorded. If the applicant is a corporation, a copy of authority to do business in Georgia, including articles of incorporation, trade name affidavit, if any, last annual report, if any;

(q) At least three character references from individuals who are in no way related to the applicant or individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the license is granted and who have not been convicted of any felony or a Municipal Code violation involving moral turpitude in the past five years. The licensing officer shall prepare forms consistent with the provisions of this subsection for the applicant, who shall submit all character references on such forms;

(r) Address of the premises to be licensed;

(s) Whether the premises are owned or rented and, if the applicant has a right to legal possession of the premises, copies of those documents giving such legal right;

(t) A plat by a registered engineer, licensed by the State or Georgia, showing the location of the proposed premises in relation to the neighborhood, the surrounding zoning, its proximity to any church, school, public park, governmental building or site or other business hereunder regulated;

(u) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:

1. If the applicant is an individual, the individual;

2. If by a partnership, by the manager or general partner;

3. If a corporation, by the president of the corporation;

4. If any other organization or association, by the chief administrative official.

(13) *Applicant to appear.* The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear at the City of Commerce and produce proof that a

nonrefundable application fee, established by resolution of the city council, has been paid and shall present the application containing the aforementioned and described information.

(14) *Application; investigation.* The city shall have 30 days to investigate the application and the background of the applicant. Upon completion of the investigation, the mayor and city council may grant the permit if it finds:

(a) The required fee has been paid;

(b) The application conforms in all respects to the provisions of this section;

(c) The applicant has not knowingly made a material misrepresentation in the application;

(d) The applicant has fully cooperated in the investigation of his or her application;

(e) The applicant, if an individual, or any of the stockholders of the corporation, any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct or convicted of an attempt to commit any of the above-mentioned offenses, or convicted in any state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit or moral turpitude;

(f) The applicant has not had an adult entertainment establishment permit or other similar license or permit denied or revoked for cause by this city or any other city located in or out of this state prior to the date of application;

(g) The building, structure, equipment or location of such business as proposed by the applicant would comply with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;

(h) The applicant is at least 21 years of age;

(i) That the applicant, his or her employee, agent, partner, director, officer, stockholder or manager has not, within five years of the date of the application, knowingly allowed or permitted any of the specified sexual activities as defined herein to be committed or allowed in or upon the premises where such adult entertainment establishment is to be located or to be used as a place in which solicitations for the specified sexual activities as defined herein openly occur;

(j) That on the date the business for which a permit is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open;

(k) That the proposed premises is not to be located too close to any church, school, library, governmental building or site or any other business restricted hereunder;

(l) That the grant of such license will not cause a violation of this section or any other ordinance or regulation of the City of Commerce, State of Georgia or the United States;

(m) Any other inquiry deemed necessary or desirable by the city to insure the health, safety and welfare of the citizens of the City of Commerce or the preservation of its neighborhoods.

(15) *Persons prohibited as licensees.*

(a) No license provided for by this section shall be issued to or held by:

1. An applicant who has not paid all required fees and taxes for a business at that location or property taxes;

2. Any person who is not of good moral character;

3. Any corporation, any of whose officers, directors or stockholders holding over five percent of the outstanding issued shares of capital stock are not of good moral character;

4. Any partnership or association, any of whose officers or members holding more than five percent interest therein are not of good moral character;

5. Any person employing, assisted by or financed in whole or in part by any person who is not of good moral character;

6. Any applicant who is not qualified to hold and conduct a business according to the laws of the United States, the State of Georgia or the City of Commerce.

(b) Should there be a sufficient number of current licenses to meet the needs and desires of the inhabitants of the city, no new licenses shall be issued. In determining the needs and desires of the inhabitants, the standard of review shall be that the market is virtually unrestrained as defined in *Young v. American Mini Theaters. Inc.*

(16) *Permit—Refusal; appeal.* If the city, following investigation of the applicant, deems that the applicant does not fulfill the requirements as set forth in this section, it shall notify the city clerk/treasurer of such opinion and, within 30 days of the date of application, provide copies of the investigation report to the city clerk/treasurer. The city clerk/treasurer shall, within ten days, notify the applicant by certified mail of such denial. Any applicant who is denied a permit may appeal such denial to the mayor and city council.

(17) *Same—Renewal.* Permits for adult entertainment establishments may be renewed on a year-to-year basis, provided that the permittees continue to meet the requirements set out in this section. The renewal fees for the adult entertainment establishment permits shall be established by resolution of the city council.

(18) *Same—Nontransferable.* No adult entertainment establishment permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment or attempted sale, transferor assignment shall be deemed to constitute a voluntary surrender of such permit, and such permit shall thereafter be null and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case the permit, upon notification to the city, shall be placed in the name of the surviving partner. An adult entertainment establishment permit issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a permit of any stock authorized but not issued at the time of the granting of a permit is thereafter issued and sold, transferred or assigned.

(19) *Change of location or name.*

(a) No adult entertainment establishment shall move from the location specified on its permit until a change of location fee, established by resolution of the city council, has been deposited with the city and approval has been obtained from the city administrator and the zoning department. Such approval shall not be given unless all requirements and regulations as contained in the city code have been met.

(b) No permittee shall operate, conduct, manage, engage in or carry on an adult entertainment establishment under any name other than his or her name and the name of the business as specified on his or her permit.

(c) Any application for an extension or expansion of a building or other place of business where an adult entertainment establishment is located shall require inspection and shall comply with the provisions and regulations of this section.

(20) *Appeal—Procedure.* The permittee shall, within ten days after he or she has been notified of an adverse determination, submit a notice of appeal to the city clerk/treasurer.

The notice of appeal shall be addressed to the city council and shall specify the subject matter of the appeal, the date of any original and amended application or requests, the date of the adverse decision (or receipt of notice thereof), the basis of the appeal, the action requested of the city council and the name and address of the applicant.

The clerk shall place the appeal on the agenda of the next regular city council meeting occurring not less than five nor more than 30 days after receipt of the application for city council action.

(21) *Same—Council determines procedure.* When an appeal is placed on the city council agenda, the city council may take either of the following actions:

(a) Set a hearing date and instruct the city clerk/treasurer to give such notice of hearing as may be required by law;

(b) Appoint a hearing officer and fix the time and place for hearing. The hearing officer may or may not be a city employee and may be appointed for an extended period of time. The clerk shall assume responsibility for such publication of notice of the hearing as may be required by law. If a hearing officer is appointed, the hearing shall be conducted in accordance with the procedures set out in this section.

(22) *City council hearing.* Whenever the city clerk/treasurer has scheduled an appeal before the city council, at the time and date set therefor, the city council shall receive all relevant testimony and evidence from the permittee, from interested parties and from city staff. The city council may sustain, overrule or modify the action complained of. The action of the city council shall be final.

(23) *Powers of hearing officer.* The hearing officer appointed pursuant to the procedure set out in this section may receive and rule on admissibility of evidence, hear testimony under oath and call witnesses as he or she may deem advisable with respect to the conduct of the hearing.

(24) *Rules of evidence inapplicable.* The city council and the hearing officer shall not be bound by the traditional rules of evidence in hearings conducted under this section. Rules of evidence as applied in an administrative hearing shall apply.

(25) *Hearing officer—Report.* The hearing officer shall, within a reasonable time not to exceed 30 days from the date such hearing is terminated, submit a written report to the city council. Such report shall contain a brief summary of the evidence considered and state findings, conclusions and recommendations. All such reports shall be filed with the city clerk/treasurer and shall be considered public records. A copy of such report shall be forwarded by certified mail to the permittee/appellant the same day it is filed with the city clerk/treasurer, with additional copies furnished the city administrator and chief of police.

The city clerk/treasurer shall place the hearing officer's report on the agenda of the next regular city council meeting occurring not less than ten days after the report is filed and shall notify the permittee/appellant of the date of such meeting at least ten days prior to the meeting unless the permittee/appellant stipulates to a shorter notice period.

(26) *Same—Action by council.* The city council may adopt or reject the hearing officer's decision in its entirety or may modify the proposed recommendation. If the city council does not adopt the hearing officer's recommendation, it may:

(a) Refer the matter to the same or another hearing officer for a completely new hearing or for the taking of additional evidence on specific points; in either of such cases, the hearing officer shall proceed as provided in this section;

(b) Decide the case upon a review of the entire record before the hearing officer with or without taking additional evidence.

(27) *Violations; penalty.* Any person violating the provisions of this section shall be guilty of a misdemeanor, punishable by a fine not to exceed $1,000.00 per violation or by imprisonment for a period not to exceed six

months, or by both such fine and imprisonment. In addition to such fine or imprisonment, violation of this section shall also be grounds for immediate suspension or revocation of the license issued hereunder.

(28) *Unlawful operation declared nuisance.* Any adult entertainment establishment operated, conducted or maintained contrary to the provisions of this section shall be and the same is hereby declared to be unlawful and a public nuisance. The city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinment thereof in the manner provided by law. It shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult entertainment establishment and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment establishment contrary to the provisions of this section. In addition, violation of the provisions of this section shall be per se grounds for suspension or revocation of a license granted hereunder.

(29) *Cleaning of licensed premises.* Each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person In charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises but shall be disposed of daily or as often as collections permit.

(30) *Self-inspection of licensed premises.* The licensee of a licensed premises or his or her designated representative shall make sanitary inspections of the licensed premises at least once a month and shall record his or her findings on a form supplied by the licensing officer. Each licensed premises shall post and maintain in a readily accessible place a schedule for maintaining the sanitation of the premises.

(31) *Sealing for unsanitary or unsafe conditions.* A licensed premises or any part thereof may be sealed by order of the licensing officer on his or her finding of a violation of this section resulting in an unsanitary or unsafe condition. Prior to sealing, the licensing officer shall serve on the licensee, by personal service on him or her or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within 24 hours after service. If the violation is not so corrected, the licensing officer may physically seal that portion of the licensed premises causing the violation and order the discontinuance of use thereof until the violation has been corrected and the seal removed by the licensing officer. The licensing officer shall affix to the sealed premises a conspicuous sign labeled "Unclean" or "Unsafe" as the case may be.

(32) *Abatement as sanitary nuisance.* A licensed premises or any part thereof may be abated as a sanitary nuisance.

(Ord. No. 96-001, § 32-210, 1-8-96)

Section 18-211—18-250. Reserved.

ARTICLE IX. WRECKER OR TOWING SERVICES[19]

[19]Editor's note(s)—Ord. No. 2018-004, adopted October 15, 2018, amended art. IX in its entirety to read as herein set out. Former art. IX pertained to the same subject matter, consisted of § 18-251, and derived from Ord. No. 2015-006A, adopted September 12, 2005.

Section 18-251. 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:

Approved heavy wrecker service means an approved wrecker service whose equipment list includes a wrecker rated to tow a heavy motor vehicle.

Approved wrecker service means any wrecker service that submits a successful application under this article and which otherwise complies with the provisions hereof to qualify for the privilege of engagement by the police department for the removal or storage of vehicles.

City means the City of Commerce Georgia.

Damaged vehicle means any vehicle suffering such mechanical or structural damage to the extent that it cannot properly or safely be operated.

Heavy motor vehicle means any motor vehicle weighing over 10,000 pounds of gross vehicle weight.

Passenger vehicle means any motor vehicle weighing up to 10,000 pounds of gross vehicle weight.

Police department means the City of Commerce police department, its officers, agents or employees.

Property owner means the owner of property, or his authorized representative, upon which a vehicle to be removed is located.

Response time means the time the wrecker service arrives at the scene of the incident after a call is received from the police department to respond. This time should not exceed 30 minutes.

Undamaged vehicle means any vehicle that has no or only minor structural or mechanical damage and is capable of being safely and properly operated.

Vehicle owner means the owner of a vehicle or his authorized representative.

Wrecker means an automotive vehicle with hoisting apparatus and equipment used for the purpose of towing damaged, wrecked, disabled or abandoned motor vehicles.

Wrecker service means any entity, corporation, partnership or individual person, either as principal, agent or employee in the business of removing, towing and/or storing motor vehicles abandoned in the roadway or on other public lands, or wrecked or disabled motor vehicles by the use of a wrecker and properly licensed by the state.

(Ord. No. 2018-004, 10-15-18)

Section 18-252. Private towing of trespassing vehicles excluded.

Removal of motor vehicles from privately owned real property shall be regulated by the Georgia Department of Motor Vehicle Safety, as provided in O.C.G.A. § 44-1-13.

(Ord. No. 2018-004, 10-15-18)

Section 18-253. Application for approved wrecker service permit, heavy wrecker service permit.

Each wrecker service desiring to be added to the city approved wrecker service list or the approved heavy wrecker service list to respond to calls for wrecker services from the city shall make application to the police department annually for approved wrecker permit. The police chief or their designee shall accept applications for

approved wrecker permits annually from September l through October 31 for permits to be valid for the subsequent calendar year. The application shall be submitted on a form provided by the police department. No application shall be processed unless all required documents have been submitted. Such application shall include but not be limited to the following information:

(1) Listing of name and address of the owner of the wrecker service. If held by a corporation or limited liability company, the names and address of its officers or managers and any stockholders or members holding 20 percent or more of the corporate stock or membership interest; if held by a partnership listing names of all partners.

(2) Certificate of insurance showing compliance with requirements contained in this article.

(3) A copy of the fee schedule to be in effect for the calendar year of the permit being sought.

(4) A copy of a current valid occupational tax certificate or business license from the city and a permit from the Georgia Department of Motor Vehicle Safety, as well as proof of insurance on the company's vehicles.

(5) Complete list of addresses of all impound/vehicle storage sites to be utilized by the wrecker service.

(Ord. No. 2018-004, 10-15-18)

Section 18-254. Processing of application.

(a) *[Examination of application.]* Upon receipt of a timely and complete application for an approved wrecker service permit or an approved heavy wrecker service permit, the police department shall examine the application for completeness, request any omitted required information, perform any necessary investigation, and inspect the equipment, storage lot(s) and business location for the applicant. Thereafter the police chief shall approve or deny the application.

(b) *Denial.* The police chief shall have due cause to deny any application for an approved wrecker service permit or approved heavy wrecker service permit for the following reasons:

(1) The application has remained incomplete for 30 days due to the failure of applicant to provide any paper or document required in the application or requested additional information.

(2) The applicant has provided false information in the application.

(3) The applicant, during the preceding 12 months from the application date, bad a wrecker service business license held by such owner revoked for cause by the state or by any political subdivision thereof, or the business or owner of the business has been convicted by any court of competent jurisdiction of engaging in unfair business practices with respect to the operation of any wrecker service.

(4) The applicant does not have an impound facility as required in this article.

(5) The applicant, if the applicant is an individual, has a conviction of any violent felony, or any serious driving offense as defined in O.C.G.A. Title 40, Chapter 6, Article 15, or currently has a suspended or revoked driver's license.

If the police chief denies any application for an approved wrecker permit or approved heavy wrecker permit, he shall do so in writing and shall notify the applicant of his decision and reasons for his decision.

(c) *Approval.* If the police chief does not deny any timely and complete application for one or more reasons stated in paragraph (a) of this section, then he shall approve the application and issue the requested approved wrecker permit or approved heavy wrecker permit to the applicant. Any application not denied within 60 days after a complete application has been filed with the city, shall be deemed approved.

(Ord. No. 2018-004, 10-15-18)

Section 18-255. Approved wrecker services, approved heavy wrecker services, rotating on-call list.

At the conclusion of the annual application and permitting process, the police department shall compile an annual list of approved wrecker services and approved heavy wrecker services. Every approved heavy wrecker service shall be shown on both lists. The police department shall make use of the wrecker services on each list on a rotating on-call basis for incidents where the owner of any vehicle does not have a preference for a wrecker service to be utilized. Each permit holder on the approved wrecker service list shall be utilized as the on-call service for one continuous week, beginning at 7:00 a.m. Monday morning until the following Monday morning at 7:00 a.m., on an equal rotating basis. Each permit holder on the approved heavy wrecker service list shall be utilized as the on-call service for heavy motor vehicles for two continuous weeks, on an equal rotating basis, for towing of heavy motor vehicles whenever the on-call approved wrecker service is not also an approved heavy wrecker service.

(Ord. No. 2018-004, 10-15-18)

Section 18-256. Unapproved wrecker services to comply with article.

It shall be unlawful for any wrecker service, whether an approved wrecker service, or not, to respond to police department calls for wrecker assistance on the streets of the city without complying with the provisions of this article. In unusual or emergency situations if the on call wrecker service determines that it is in need of additional assistance from another wrecker service, the on-call wrecker service may seek assistance from any wrecker service that has been approved by the city under the provision of this article.

(Ord. No. 2018-004, 10-15-18)

Section 18-257. Identification of all wreckers.

All wreckers that operate upon any of the streets of the city shall be clearly identified as such, with the name and domicile of the wrecker service operating the wrecker.

(Ord. No. 2018-004, 10-15-18)

Section 18-258. Limitations upon proceeding to incident scene.

No wrecker shall go to any incident scene unless:

(1) Called by the police department;

(2) Called by the vehicle owner;

(3) There exists an extreme emergency immediately endangering life or property; or

(4) Called by the property owner where vehicle located.

(Ord. No. 2018-004, 10-15-18)

Section 18-259. Prohibition against monitor running.

No wrecker service shall proceed to an incident scene by reason of any information received by monitoring police radio calls.

(Ord. No. 2018-004, 10-15-18)

Section 18-259.1. Use of due care.

(a) Wrecker services shall determine the method and manner of removing vehicles; provided, however, that they shall exercise due care in removal operations and shall follow the direction of the police officer directing the removal so as not to impede traffic or endanger the general public and property.

(b) The driver of each wrecker towing away any motor vehicle from the scene of a wreck shall also take away all parts belonging to the motor vehicle which is being towed away, or, if they consist of small parts or broken glass, driver shall clear the streets of said small parts and glass, unless the driver is ordered not to do so by the investigating police officer due to circumstances at the scene of the accident. No additional fee may be charged for this clean up.

(Ord. No. 2018-004, § 18-260, 10-15-18)

Editor's note(s)—Ord. No. 2018-004, adopted October 15, 2018 enacted provisions to be designated §§ 18-251—18-271. Inasmuch as there already exists §§ 18-260, 18-261, provisions designated as §§ 18-260—18-271 have been renumbered as §§ 18-259.1—18-259.12. Original ordinance section numbers have been maintained in the history notes following each section.

Section 18-259.2. Information supplied to police department; notification to owner.

(a) Whenever any wrecked or abandoned motor vehicle is removed without the request, direction or participation of the police department, the wrecker service performing the removal shall, if the owner is unknown, within 72 hours of such removal, furnish to the police department the following information with respect to such motor vehicle: Tag number and description, including year, model, make, color, and vehicle identification number.

(b) The wrecker service shall notify the motor vehicle owner of the time and place of removal and of the present whereabouts of the vehicle, as required by O.C.G.A. § 40-11-1 et seq.

(Ord. No. 2018-004, § 18-261, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.3. Motor vehicle inventory; procedures.

Whenever any motor vehicle is removed by a wrecker service at the direction of a police officer, the police officer shall make a thorough inventory of all equipment, accessories, personal articles and other items either attached to or located within the motor vehicle. Such inventory shall be completed on a form supplied by the police department and signed by the officer in charge of the removal. Upon acceptance of the motor vehicle and prior to its removal, the agent or employee of the wrecker service performing the removal shall sign the inventory form. The officer shall retain the original and the wrecker service shall retain a copy.

(Ord. No. 2018-004, § 18-262, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.4. Wrecker services to hold motor vehicles upon direction of police.

When specifically directed to do so by the police department, the wrecker service shall hold motor vehicles for evidence, confiscation or any other purposes permitted by law. Upon the written and signed authorization of the police department on a form prescribed by the police department, the wrecker service shall release any motor vehicle so held to the owner, his authorized representative or other person entitled by law to possession of the vehicle.

(Ord. No. 2018-004, § 18-263, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.5. Police department calls to wrecker services; owner's choices of wrecker service.

(a) A motor vehicle owner in ordinary, non-emergency situations may engage a private wrecker service of their choice to remove their motor vehicle. The responding officer shall advise the motor vehicle owner of his option to call the wrecker service of their choice that is capable of responding in a reasonable amount of time.

(b) If the owner states no preference, the police officer shall request the 911 dispatching center to call the approved wrecker service that is on duty in the rotation.

(c) If the owner states no preference, and if a heavy motor vehicle must be towed, and if the approved wrecker service on duty for that week is not an approved heavy wrecker service, then the police officer shall request the 911 dispatching center to call the approved heavy wrecker service on duty in the rotation.

(Ord. No. 2018-004, § 18-264, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.6. Requirements for approved wrecker service impound facilities.

(a) Each impound facility of the applying or approved wrecker service or approved heavy wrecker service must be located within Jackson County or with in a five-mile radius of the city limits of Commerce, Georgia, and shall be owned or leased by the applicant.

(b) The gate to the impound lot shall be locked and remain locked during the hours of darkness except to provide reasonable ingress and egress in connection with wrecker service operations.

(c) Each approved wrecker service and each approved heavy wrecker service shall submit to the police department an inventory of all vehicles remaining in its possession whose owner has not been identified and notified. The inventory shall be submitted within seven days of any request by the police department but not less frequently than every six months, and shall be completed on a form supplied or approved by the city.

(d) The requirements for the impound facility of any approved wrecker service permit holder and any approved heavy wrecker service permit holder are as follows:

    (1) Impoundment must be located at a properly zoned location within Jackson County or with in a five-mile radius of the city limits of Commerce, Georgia, and complying with all applicable zoning and land use laws, rules, regulations and ordinances.

    (2) The entire impound lot shall be adequately illuminated during the hours of darkness to discourage and detect attempts at theft or vandalism.

(3) All fences must be of eight feet tall, opaque and made of chain link or wood, with gates that can be securely locked.

(4) An attendant for every approved wrecker service impound facility shall be available to provide service at the impound lot Monday thru Friday per week between 9:00 a.m. and 5:00 p.m.

(5) A wrecker service impound facility is not required to keep business hours on Saturday or Sunday or on legal holidays.

(6) Wrecker services are required to provide a contact and number for individuals wishing to retrieve their vehicle outside business hours.

(e) Nothing contained in this article shall be construed to prohibit the police department from providing its own impoundment facility upon city property for the purpose of storing or holding vehicles for evidence, confiscation, or any other purpose permitted by law.

(Ord. No. 2018-004, § 18-265, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.7. Insurance required.

Approved wrecker services and approved heavy wrecker services shall carry liability insurance policies in compliance with the requirements of the state department of motor vehicle safety for loss or damage occasioned by negligence or misfeasance on the part of the wrecker service, and name the city as an additional insured. Such policies shall be provided to the city upon request. Such policies shall also provide for full loss, theft or damage benefits payable to any motor vehicle owner or property owner suffering loss, theft or damage with respect to any motor vehicle or to equipment, accessories, personal articles or other items either attached to or located within a motor vehicle removed and/or stored while such motor vehicle is in the custody, control and possession of the wrecker service.

(Ord. No. 2018-004, § 18-266, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.8. Response of approved wrecker service.

(a) Should a mistake be made in good faith by the police department or the 911 dispatching center in dispatching the wrong wrecker service, no charge can be made by the wrong wrecker service for such response or the return to place of business unless such wrecker service actually performs the removal of the motor vehicle.

(b) Where the investigating officer of the police department at any incident scene determines that the on-call wrecker service has failed to appear at the scene within 30 minutes of the request for service, the police officer shall have the option to cancel the request for service to the on-call wrecker service, and to place a request for service with the approved wrecker service or approved heavy wrecker service which will be on-call for the subsequent week.

(Ord. No. 2018-004, § 18-267, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.9. Daily storage charge for approved wrecker service and approved heavy wrecker service; fee for wrecker service.

The provisions of this section apply to all work performed for any customer of an approved wrecker service or approved heavy wrecker service when service is requested by the police department. No fees other than those authorized by this section may be charged for towing when called upon to do so by the police department.

(a) No approved wrecker service or approved heavy wrecker service shall charge in excess of $30.00 per day for storage of a passenger vehicle or heavy motor vehicle.

(b) No approved wrecker service or approved heavy wrecker service shall charge for the first 24 hours that the vehicle was stored in any lot.

(c) No approved wrecker service or approved heavy wrecker service shall charge for any day the wrecker service impound lot is closed and the owner of the vehicle is unable to claim his vehicle.

(d) An approved wreckers service may charge an after-hours fee of $50.00 outside of normal business hours, when a vehicle owner wants to claim their vehicle.

(e) No approved wrecker service or approved heavy wrecker service shall store vehicles at a location other than the secure impound lot submitted with the application for city approval without written prior approval of the police department.

(f) No approved wrecker service or approved heavy wrecker service shall charge in excess of the following amounts for a tow:

Vehicles	**0 to 10,000 Pounds**
Basic Tow	$150.00 within Jackson County
Basic Clean Up	25.00
Administrative Paperwork	25.00
On the scene over 1 hour	60.00 (after 1 hour)
Overturned Vehicle	85.00
Vehicles	**10,001 to 20,000 Pounds**
Basic Tow	225.00
Basic Clean Up	25.00
Administrative Paperwork	25.00
On scene over 1 hour	85.00 (after 1 hour)
Overturned	150.00
Vehicles	**20,001 and over Pounds**
Basic Tow	650.00
Basic Clean Up	100.00
Administrative Paperwork	25.00
On scene over 1 hour	550.00 (after 1 hour)
Overturned	550.00
Dailey Storage fee for all vehicles	$30.00 a day.
After Hours Fee	$50.00 (M—F outside normal business hours, weekends, and holidays)

(g) Whenever any city-owned or city-leased vehicle needs to be towed, the on-call approved wrecker service or approved heavy wrecker service shall tow it without charge as long as the tow is within Jackson County, Georgia. If the tow trip is wholly or partly outside Jackson County, but originates or ends at a location within 40 miles of Jackson County, Georgia the charge for the tow shall not exceed $175.00.

(Ord. No. 2018-004, § 18-268, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.10. Minimum equipment.

(a) Each wrecker service approved under the provisions of this article shall have the following minimum equipment in operating condition:

(1) A roll back wrecker rated at one ton or greater or a wrecker rated at one ton or greater with a wheel lift and a winch rated at four tons or greater.

(2) Each approved heavy wrecker service shall additionally have a wrecker rated for the towing of heavy motor vehicles.

(Ord. No. 2018-004, § 18-269, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.11. Revocation, suspension of wrecker service operation.

With 24 hours' notice the police chief may temporarily suspend the permit right of any wrecker service permit holder to respond to calls from the city for violations of this article, or for any conduct by the wrecker service permit holder that threatens the public safety, property or interferes with the efficient operation of the police department. The permit holder shall be entitled to hearing before the city manager upon written request for a hearing by the permit holder. The permit holder shall request such a hearing within ten calendar days of notification of the suspension by chief of police; otherwise the suspension shall be deemed a revocation of the permit. The permit holder shall be provided five days' advance written notice of the hearing date by hand delivery or certified mail return receipt requested. The hearing before the city manager shall be held within 14 days of such written request by the permit holder. At the hearing the city manager may reinstate the permit, continue the suspension or revoke the permit.

(Ord. No. 2018-004, § 18-270, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

Section 18-259.12. Penalty for violation.

Violations of the provisions of this article shall be heard in the municipal court of the city and subject to the penalties set forth in City Code section 1-12. Each day such violation continues shall be deemed a separate offense.

(Ord. No. 2018-004, § 18-271, 10-15-18)

Editor's note(s)—See editor's note following § 18-259.1.

ARTICLE X. DONATION BOXES

Section 18-260. Definition.

As used herein, the term "donation box" shall be defined as any unattended container, receptacle, or similar device used for soliciting and collecting donations of clothing and/or other salvageable personal property and shall not include any unattended donation box within a building or drop boxes for books and audio visual items of the city library.

(Ord. No. 2014-001, 3-17-14)

Section 18-261. Donation boxes prohibited.

Donation boxes are prohibited in the city. Any donation box existing within the city on the effective date of the ordinance from which this section derived, shall be removed within 30 days of the effective date of this section. Any property owner allowing a donation box to remain on his property in violation of this section shall be punishable by a fine of $250.00 per offense and each day of violation shall be considered a separate offense.

(Ord. No. 2016-005, § II, 7-18-16)

Editor's note(s)—Ord. No. 2016-005, § I, adopted July 18, 2016, repealed §§ 18-261—18-267 and enacted a new § 18-261 as set out herein. Former §§ 18-261—18-267 pertained to donation boxes and derived from Ord. No. 2014-001, adopted March 17, 2014.

Chapter 22 CEMETERIES[20]

Section 22-1. Lots—Sale.

(a) The sales of lots in a city cemetery shall be for the price and upon the terms and conditions prescribed from time to time by ordinance or resolution of the city council. Conveyance of lots shall be by special cemetery deeds signed by the city clerk. The city shall retain the right of first refusal to repurchase the lot for the current value of the lot and this right of first refusal shall be stated on the cemetery deed. The form of the cemetery deed shall be as prescribed by the city clerk from time to time. The city manager shall have the authority to exercise the city's right of first refusal to repurchase cemetery lots for the current value of the lot and the city manager is authorized to expend city funds for said repurchase and to take all actions necessary to effectuate said repurchase.

(b) No transfer of title shall be recognized by the city unless a copy of the special cemetery transfer deed is filed with the city clerk. In instances where the lot title holder is deceased or legally incapacitated transfer must be in accordance with the laws of the state relative to transfer of title to real property. Such transfers made by heirs, devisees, guardians, executors or other legal representatives must be accompanied by an opinion of an attorney authorized to practice law in this state which states that such grantor has the legal right to convey title to the subject lot.

(Code 1987, § 15-101; Ord. No. 2002.01, 1-14-02; Ord. No. 2013-003, 2-11-13)

Section 22-2. Same—Maintenance.

It shall be the duty of each owner of a burial plot or lot in a city cemetery to care for and maintain the same in a manner and conditions suitable to and approved by the city council or by the officer charged by the council with the duty of inspecting such cemetery lots.

(Code 1987, § 15-102)

Section 22-3. Human burials only.

The remains of human beings only shall be buried in any cemetery maintained by the city.

(Code 1987, § 15-103)

Section 22-4. Place of burials.

It shall be unlawful for any person to bury, or cause or allow to be buried, any dead person in any other place in the city than a public cemetery or a licensed private cemetery.

(Code 1987, § 15-104)

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[20]Cross reference(s)—Streets, sidewalks and other public places, ch. 62.

State law reference(s)—Criminal trespass and damage to property, O.C.G.A. § 16-7-20 et seq.; permit for disturbing burial place in land development, O.C.G.A. § 36-60-6; preservation and protection of abandoned or unmaintained cemeteries, O.C.G.A. § 36-60-6.1.

Section 22-5. Obstructing walkways.

It shall be unlawful for any person to close up or obstruct any walkway between lots in any city cemetery, by erection or monuments in or across the walkway, or by putting up a wall or any other obstruction that would prohibit full passage between lots.

(Code 1987, § 15-105)

Section 22-6. Removal of prohibited obstructions.

Should any walkway in a city cemetery be closed or obstructed as prohibited in section 22-5, condemnation proceedings shall be commenced against the person offending, and the monument or other obstruction shall be confiscated and removed from the walkway.

(Code 1987, § 15-106)

Section 22-7. Streets; walkways.

It shall be unlawful for any person to travel upon any of the grounds of a city cemetery, except upon a street, walkway or path established and designated for the purpose.

(Code 1987, § 15-107)

Section 22-8. Malicious mischief.

It shall be unlawful for any person to injure or disturb any grave or to deface, pollute or remove anything placed to mark a grave, or to destroy any wall placed around any grave or to remove any plan, post or timber or to mutilate, deface or remove any tomb, monument or gravestone, or any other structure placed in a city cemetery or willfully to disturb, destroy, cut, break, remove or injure any tree, shrub or plant that may be growing in the cemetery.

(Code 1987, § 15-108)

Section 22-9. Frequenting cemetery after dark.

It shall be unlawful for any person to be on the premises of a public cemetery between the hours of sunset and the following sunrise.

(Code 1987, § 15-109)

Section 22-10. Disinterments.

No person without a permit shall disinter a human body within the city limits.

(Code 1987, § 15-110)

Section 22-11. Charges for lots and grave openings.

The prices for grave sites and grave openings in city cemeteries shall be fixed from time to time by city council. Nothing in this Code shall affect any ordinance fixing such prices or otherwise governing the sale of

cemetery lots, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Code 1987, § 15-111)

Section 22-12. Permit—Placing objects, landscaping, etc.

No marker, slab, coping or shrubbery shall be erected or planted, nor shall any landscaping be performed in a city cemetery, without first obtaining a permit from the city, nor shall there be erected or planted anything of any character that will in any manner create an obstruction to the general maintenance thereof, without the express written authority of the city manager.

(Code 1987, § 15-112)

Section 22-13. Same—Enclosures.

It shall be unlawful for any person to enclose any lot in a cemetery without first obtaining written permission of the city, in which permit shall provide that the lot has been measured and the corners established prior to the issuing of the same.

(Code 1987, § 15-113)

Section 22-14. Same—Restrictions.

Any permit issued for any of the purposes enumerated in this chapter shall be subject to and shall set forth such restrictions as the city council shall deem necessary and proper.

(Code 1987, § 15-114)

Section 22-15. Coffin and vaults required.

Any remains of human beings being buried in any cemetery maintained by the city shall be placed in a coffin and the coffin shall be placed in a sealed vault.

(Ord. No. 2003.004, 5-12-03)

Chapter 26 ELECTIONS[21]

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Section 26-1. Registration lists and records.

The city shall maintain its own permanent registration system. The form of the registration cards shall be in accordance with the provisions of O.C.G.A. § 21-2-217. Such cards and other documents of the board of registrars shall be open for public inspection at the office of the city clerk during normal business hours.

(Code 1987, § 2-203)

State law reference(s)—Designation of form of municipal registration, O.C.G.A. § 21-3-124; preparation of list of electors in municipalities electing to maintain their own registration list, O.C.G.A. § 21-3-134.

Section 26-2. Polling places.

The polling place within the city shall be determined and announced by the city council three weeks prior to any election.

(Code 1987, § 2-402)

State law reference(s)—Duty of governing authority to fix location of polling places, O.C.G.A. § 21-3-163.

Section 26-3. Plurality of votes required for election.

Candidates for any public municipal office shall be elected by a plurality of the votes cast to fill such office.

(Code 1987, § 2-406)

State law reference(s)—Vote required for nomination or election, O.C.G.A. § 21-3-407.

Section 26-4. Qualifying fees.

The qualifying fee for mayor and city council positions shall be three percent of the annual salary for the office.

The qualifying fee shall be paid to the city clerk at the time the candidate qualifies for election to the office.

(Ord. No. 99-07, 6-14-99)

Section 26-5. Conduct of elections by county.

The Mayor and Council may authorize Jackson County to conduct any or all municipal elections as authorized by O.C.G.A. § 21-2-45 and may authorize intergovernmental contracts with Jackson County for such purposes upon such terms and conditions as the Mayor and Council may agree.

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[21]Cross reference(s)—Administration, ch. 2.

State law reference(s)—Georgia Municipal Election Code, O.C.G.A. § 21-3-1 et seq.

(Ord. No. 2022-006, 9-19-22)

Chapter 30 ENVIRONMENT[22]

ARTICLE I. IN GENERAL

Section 30-1. Cleanliness of premises—Generally.

(a) Every person whether owner, tenant, agent or employee owning, holding or occupying property in the city shall at all times maintain such property, whether a vacant lot or otherwise, in a clean and sanitary condition, keeping all weeds cut, waste paper, trash, junk and other rubbish of every sort cleaned off of such property.

(b) For the purpose of this section, the term "junk" shall mean any motor vehicle, machinery, appliance, product or merchandise with parts missing, or scrap metal or other scrap materials that are damaged, deteriorated or that are in condition which prevents their use for the purpose for which they were intended. This definition specifically includes motor vehicles not operable and that cannot be made operable by minor repairs and which do not have current tag, registration and insurance.

(Ord. No. 95-04, 4-10-95)

Editor's note(s)—Ord. No. 95-04, adopted April 10, 1995, amended the Code by the addition of §§ 30-28 and 30-29, which provisions have been included herein at the discretion of the editor as §§ 30-1 and 30-2.

Section 30-2. Same—Penalty.

If any person, whether owner, tenant, agent or employee, shall fail or refuse to cut the weeds from and cleanup all waste paper, trash, junk and rubbish of every character from any vacant lot or other property owned, held or controlled by such person within ten days after notice by the building and code official of the city or his designee, he shall be guilty of an offense under this Code and punished as provided in Section 1-12 of this Code upon conviction thereof in the Municipal Court. Where any offense continues from day to day, each day's continuance thereof shall be deemed a separate offense.

(Ord. No. 95-04, 4-10-95)

Editor's note(s)—See the editor's note to § 30-1.

Section 30-3—30-25. Reserved.

ARTICLE II. SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL[23]

[22]Cross reference(s)—Animals, ch. 10; buildings and building regulations, ch. 14; businesses, ch. 18; fire prevention and protection, ch. 34; floods, ch. 38; offenses and miscellaneous provisions, ch. 46; parks and recreation, ch. 50; solid waste, ch. 58; streets, sidewalks and other public places, ch. 62; utilities, ch. 78; zoning, app. A.

[23]Editor's note(s)—Ordinance No. 96-08, §§ I—IX, adopted December 9, 1996, deleted §§ 30-26, 30-27, 30-41—30-54, 30-66—30-69 and inserted new provisions, §§ 30-26—30. Formerly, such sections pertained to similar provisions and derived from Ord. of 7-13-87.

State law reference(s)—Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1 et seq.

DIVISION 1. GENERALLY[24]

Section 30-26. Title.

This article will be known as "The City of Commerce Soil Erosion, Sedimentation and Pollution Control Ordinance."

(Ord. No. 2010-010, 6-14-10)

Section 30-27. Definitions.

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

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.

Board: The board 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.

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

CPESC: Certified professional in erosion and sediment control with current certification by Certified Profession in Erosion and Sediment Control, Inc., a corporation registered in North Carolina, 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 Certified Professional in Erosion and Sediment Control, Inc.

Director: The director of the environmental protection division or an authorized representative.

District: The Oconee River Soil and Water Conservation District.

Division: The environmental protection division (EPD) of the department of natural resources.

[24]Editor's note(s)—Ord. No. 2010-010, adopted June 14, 2010, repealed Art. II, Div. 1, and enacted a new Art. II, Div. 1, to read as set out herein. Former Art. II, Div. 1, §§ 30-26—30-34, pertained to similar subject matter and derived from Ord. No. 96-08, §§ I—IX, adopted Dec. 9, 1996; and Ord. No. 2003-009, §§ I—IX, adopted Nov. 10, 2003.

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 stormwater management, drainage control, or flood control purposes.

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 subsection 30-29(c) of this article.

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 percent of the soil surface is uniformly covered in permanent vegetation with a density of 70 percent or greater, or equivalent permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a 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.

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.

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

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 subsection 30-28(5).

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.

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

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.

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.

NOI: A notice of intent form provided by EPD for coverage under the state general permit.

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 stormwater 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.

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

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: Subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

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

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.

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.

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.

Soil and water conservation district approved plan: An erosion, sedimentation and pollution control plan approved in writing by the Oconee River 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 stormwater 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 [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.

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.

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.gaepd.org. 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.

Vegetative erosion and sedimentation control measures: Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

(1) Permanent seeding, sprigging or planting, producing longterm vegetative cover, or

(2) Temporary seeding, producing shortterm vegetative cover; or

(3) 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 groundwater 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.

(Ord. No. 2010-010, 6-14-10)

Section 30-28. Exemptions.

This article 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;

(3) 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) The construction of single-family residences, when such construction disturbs less than one 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 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 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 O.C.G.A. § 12-7-6(b) and the buffer zones provided by this paragraph shall be enforced by the local issuing authority;

(5) 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) 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 subsection 30-29(c) of this article, 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 years after completion of such forestry practices;

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

(8) Any project involving less than one 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 acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways 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 acre, which involves land disturbing activity, and which is within 200 feet of any such excluded channel or drainageway, 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) 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) 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) Any public water system reservoir.

(Ord. No. 2010-010, 6-14-10)

Section 30-29. 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 article 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 subsections (b) and (c). 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 article and the NPDES general permit.

(b) *Minimum requirements/BMPs.*

(1) Best management practices as set forth in subsections (b) and (c) 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 stormwater issued pursuant to O.C.G.A. § 12-5-30(f), 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(b).

(2) A discharge of stormwater 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 O.C.G.A. § 12-5-30(f), 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 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten 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 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 [O.C.G.A.] § 12-5-30(f), the "Georgia Water Quality Control Act", for each day on which such failure occurs.

(4) The director 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 may set more stringent buffer requirements than stated in subsection (c)(15) and (16), 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, regarding 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 subsection (b)(2);

(15) Except as provided in paragraph (16) 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 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 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. 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:

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

(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.

(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 subsections (b) and (c).

(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 article or the terms of the permit.

(Ord. No. 2010-010, 6-14-10)

Section 30-30. 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, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this article, 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 Commerce without first obtaining a permit from the City of Commerce 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 City of Commerce 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). 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 subsections 30-29(b) and (c) will be met. Applications for a permit will not be accepted unless accompanied by six 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.

(3) In addition to the local permitting fees, fees will also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), 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 O.C.G.A. § 12-7-8(a) 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 O.C.G.A. § 12-7-17(9) or (10) 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 subsections 30-29(c)(15) and (16) has been obtained, all fees have been paid, and bonding, if required as per subsection (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 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 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.

(c) *Plan requirements.*

(1) Plans must be prepared to meet the minimum requirements as contained in subsections 30-29(b) and (c), 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 article. 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 stormwater 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.

(d) *Permits.*

(1) Permits shall be issued or denied as soon as practicable but in any event not later than 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 unless the erosion, sedimentation and pollution control plan has been approved by the district and the local issuing authority has affirmatively determined that the plan is in compliance with this article, any variances required by subsection 30-29(c)(15) and (16) are obtained, bonding requirements, if necessary, as per subsection 30-30(b)(6) are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the local issuing authority 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 article, 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) 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 article. 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.

(6) 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).

(Ord. No. 2010-010, 6-14-10)

Section 30-31. Inspection and enforcement.

(a) The City of Commerce 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 article, 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 article.

(b) The local issuing authority must amend its ordinances to the extent appropriate within 12 months of any amendments to the Erosion and Sedimentation Act of 1975.

(c) The City of Commerce shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, 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 semiannually review the actions of counties and municipalities which have 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 any county or municipality for the purpose of improving the effectiveness of the county's or municipality'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 which have been certified as local issuing authorities pursuant to [O.C.G.A.] § 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 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 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 as a local issuing authority.

(Ord. No. 2010-010, 6-14-10)

Section 30-32. 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 article 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.

(b) *Stop work orders.*

(1) For the first and second violations of the provisions of this article, the director or the local issuing authority 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 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 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 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 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 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) *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 article and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of sbusection 30-30(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) *Monetary penalties.*

(1) Any person who violates any provisions of this article, 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 director issued as provided in this article shall be liable for a civil penalty not to exceed $2,500.00 per day. For the purpose of enforcing the provisions of this article, 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 article under county ordinances approved under this article 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.

(Ord. No. 2010-010, 6-14-10)

Section 30-33. 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 article.

(d) If a state general permittee who has operational control of land disturbing activities for a site has met the certification requirements of O.C.G.A. § 12-7-19(b)(1), 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 O.C.G.A § 12-7-19(b)(4) and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

(Ord. No. 2010-010, 6-14-10)

Section 30-34. Administrative appeal and 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 City of Commerce City Council within 30 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 de novo to the Superior Court of Jackson County Georgia.

(Ord. No. 2010-010, 6-14-10)

Section 30-35. Effectivity, validity and liability.

(a) *Effectivity.* This article shall become effective on the _____ day of June, 2010.

(b) *Validity.* If any section, paragraph, clause, phrase, or provision of this article shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this article.

(c) *Liability.*

(1) Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article 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 article or the terms of the permit.

(3) No provision of this article 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.

(Ord. No. 2010-010, 6-14-10)

Section 30-36—30-45. Reserved.

DIVISION 2. APPLICATION/PERMIT PROCESS

Section 30-46. General.

The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the issuing authority that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and other ordinances which regulate the development of land within the jurisdictional boundaries of the issuing authority.

(Ord. No. 96-08, § V(A), 12-9-96)

Section 30-47. Application requirements.

(a) No person shall conduct any land disturbing activity within the jurisdictional boundaries of the City of Commerce, Georgia without first obtaining a permit from the Commerce Building and Code Enforcement Department to perform such activity.

(b) The application for a permit shall be submitted to the building and code enforcement department and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in section 30-48 of this article. Soil erosion and sedimentation control plans shall conform to the provisions of section 30-29(b) and (c) of this article. Applications for a permit will not be accepted unless accompanied by five copies of the applicant's soil erosion and sedimentation control plans.

(c) A fee, in the amount of $50.00 shall be charged for each application.

(d) Immediately upon receipt of an application and plan for a permit, the issuing authority shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. The results of the district review shall be forwarded to the issuing authority. No permit will be issued unless the plan has been approved by the district, and any variances required by section 30-29(b)(15) and (16) and bonding, if required as per section 30-47(e)(2), have been obtained. Such review will not be required if the issuing authority and the district have entered into an agreement which allows the issuing authority to conduct such review and approval of the plan without referring the application and plan to the district.

(e) (1) If a permit applicant has had two or more violations of previous permits, this article, or the Erosion and Sedimentation Act, as amended within three years prior to the date of filing of the application under consideration, the issuing authority may deny the permit application.

(2) The issuing authority 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 article or with the conditions of the permit after issuance, the issuing authority may call the bond or any pert 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 issuing authority with respect to alleged permit violations.

(Ord. No. 96-08, § V(B), 12-9-96)

Section 30-48. Plan requirements.

(a) Plans must be prepared to meet the minimum requirements as contained in section 30-29(b) and (c) of this article. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the Manual for Erosion and Sediment Control in Georgia, published by the state soil and water conservation commission as a guide; or through the use of 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 article. 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 stormwater management facilities, local ordinances and state laws.

(b) Data required for site plan.

(1) Narrative or notes, and other information: Notes or narrative to be located on the site plan in general notes or in erosion and sediment control notes.

(2) Description of existing land use at project site and description of proposed project.

(3) Name, address, and phone number of the property owner.

(4) Name and phone number of 24-hour local contact who is responsible for erosion and sedimentation controls.

(5) Size of project, or phase under construction, in acres.

(6) Activity schedule showing anticipated starting and completion dates for the project. Include the statement in bold letters, that "the installation of erosion and sedimentation control measures and practices shall occur prior to or concurrent with land disturbing activities."

(7) Stormwater and sedimentation management systems storage capacity, hydrologic study, and calculations, including off-site drainage areas.

(8) Vegetative plan for all temporary and permanent vegetative practices, including species, planting dates, and seeding, fertilizer, lime and mulching rates. The vegetative plan should show options for year round seeding.

(9) Detail drawings for all structural practices. Specifications may follow guidelines set forth in the Manual for Erosion and Sediment Control in Georgia.

(10) Maintenance statement - "Erosion and sedimentation control measures will be maintained at all times. Additional erosion and sedimentation control measures and practices will be installed if deemed necessary by onsite inspection."

(c) Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control. The certified plans shall contain:

(1) Graphic scale and north point or arrow indicating magnetic north.

(2) Vicinity maps showing location of project and existing streets.

(3) Boundary line survey.

(4) Delineation of disturbed areas within project boundary.

(5) Existing and planned contours, with contour lines drawn with an interval in accordance with the following:

Map scale	Ground slope	Contour interval, ft.
1 in. = 100 ft.	flat 0—2%	0.5 or 1
or larger scale	Rolling 2—8%	1 or 2
	Steep 8% +	2, 5 or 10

(6) Adjacent areas and features areas such as streams, lakes, residential areas, etc. which might be affected should be indicated on the plan.

(7) Proposed structures or additions to existing structures and paved areas.

(8) Delineate the 25-foot horizontal buffer adjacent to state waters and the specified width in MRPA areas.

(9) Delineate the specified horizontal buffer along designated trout streams, where applicable.

(10) Location of erosion and sedimentation control measures and practices using coding symbols from the Manual for Erosion and Sediment Control in Georgia, Chapter 6.

(d) Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the property owner.

(Ord. No. 96-08, § V(C), 12-9-96)

Section 30-49. Permits.

(a) Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the issuing authority of a completed application, providing variances and bonding are obtained, where necessary.

(b) No permit shall be issued by the issuing authority unless the erosion and sedimentation control plan has been approved by the district and the issuing authority has affirmatively determined that the plan is in compliance with this article, any variances required by section 30-29(b)(15) and (16) are obtained, bonding requirements, if necessary, as per section 30-30(b)(5)b. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the issuing authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

(c) If the tract is to be developed in phases, then a separate permit shall be required for each phase.

(d) The permit may be suspended, revoked, or modified by the 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 article. 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.

(e) No permit shall be issued unless the applicant provides a statement from the Commerce City Clerk's Office certifying that all ad valorem taxes levied against the property and due and owning have been paid.

(Ord. No. 96-08, § V(D), 12-9-96)

Section 30-50—30-100. Reserved.

ARTICLE III. NOISE[25]

Section 30-101. Declared unlawful.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual sound or noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the City of Commerce Excessive and disturbing sound is a serious hazard to the public health and welfare, safety, and the quality of life. A substantial body of science and technology exists by which excessive and disturbing sound may be substantially abated. People have a right to and should be ensured an environment free from excessive and disturbing sound that may jeopardize their health, safety, or welfare or degrade the quality of life. In order to ensure attractive residential and commercial areas, it is necessary that an

[25]State law reference(s)—Limits on sound volume produced by radio, tape player or other mechanical sound-making device or instrument from within the motor vehicle, O.C.G.A. § 40-6-14; sale of muffler which causes excessive noise prohibited, O.C.G.A. § 40-8-71(c).

audibly satisfying environment be maintained. The City of Commerce is more likely to attract permanent residents and commercial enterprises if it controls and maintains appropriate noise quality and the residents will ultimately gain financial improvements and protection in their quality of life as a result of these regulations.

(Ord. of 9-18-2017)

Section 30-102. Definitions.

All terminology used in this article, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. The following words and terms, when used in this Article, shall have the following meanings:

(a) A-weighting is the electronic filtering in sound level meters that models human hearing frequency sensitivity.

(b) Background sound level is the total sound pressure level in the area of interest excluding the noise source of interest.

(c) Boom Box means any self-contained, portable, hand-held music or sound amplification or reproduction equipment capable of emitting sound.

(d) Boom Car means any vehicle with loudspeakers, amplifiers, radio receiving sets, musical instruments, phonographs or other equipment capable of producing, reproducing or emitting noise which is cast upon public property or private property.

(e) Commercial or business property category is all property which is used primarily for the sale of merchandise or goods, or for the performances of service, or for office or clerical work.

(f) Construction is any site preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

(g) Decibel (dB) is the unit of measurement for sound pressure level at a specified location.

(h) dBA is the A-weighted unit of sound pressure level.

(i) Emergency is any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(j) Emergency work is any work or action performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an Emergency.

(k) Impulsive sound is a sound having duration of less than one second with an abrupt onset and rapid decay.

(l) Industrial or manufacturing property category is any property which is used primarily for manufacturing or processing.

(m) Institutional property category is any property which is used primarily for public purposes such as city hall or a city park.

(n) Legal holidays recognized by Commerce include New Years Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

(o) Muffler is a sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine where such a device is part of the normal configuration of the equipment.

(p) Multi-family dwelling is any multifamily structure, multifamily building, or other facility promised and/or leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. This definition includes, but not limited to, multifamily dwellings, multifamily apartment units, boarding houses, rooming houses, group homes and flats. Noise is any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological or physiological effect on humans or violates this Ordinance.

(q) Noise disturbance is any sound that (a) endangers the safety or health of any person, (b) disturbs a reasonable person of normal sensitivities, or (c) endangers personal or real property or violates this Ordinance.

(r) Noise nuisance is the making, continuing or causing to be made or continued acts which are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration so as to annoy, to distress, or to disturb the quiet, comfort, or repose of any person of reasonable nervous sensibilities within the vicinity or hearing thereof, or so as to endanger or injure the safety or health of humans or animals, or so as to interfere with the physical well-being of humans or animals, or so as to endanger or injure personal or real property except in the case of alerting persons to an emergency; or the operation of emergency vehicles; or motor vehicles while moving on a public right-ofway, public waterway or railway; or sounds produced by any governmental body in the performance of a governmental function; or sounds generated at a scheduled and permitted function, parade or outdoor celebration, or any violation of this Ordinance.

(s) Noise sensitive facility means any facility whose operations may be detrimentally impacted by excessive sound levels. Such facilities include, but are not limited to, schools, hospitals, and places of worship.

(t) Octave band is all the components in a sound spectrum whose frequencies are between two sine wave components separated by an octave.

(u) Perimeter refers to the outermost boundary.

(v) Public space property category is any real property or structures thereon that is owned, leased, or controlled by a governmental entity.

(w) Real property line is the line, including its vertical extension that separates one parcel of real property from another.

(x) Receiving property is the area from which the measurement of sound pressure levels is being taken, provided said area is not within the property lines of the sound projecting property or within the confines of the sound projecting unit in properties with common ownership such as condominiums and/or apartments.

(y) Residential property category is all property on which people legally live.

(z) Sound level meter (SLM) is an instrument used to measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in ANSI Standard S 1.41983 or the latest version thereof. Sound pressure level (SPL) is 20 multiplied by the logarithm, to the base ten, of the A-weighted measured sound pressure divided by the sound pressure associated with the threshold of human hearing, in units of decibels

(aa) Structure is a building or other object constructed from several parts that can act as a dwelling or other location suitable for a person(s) to occupy.

(bb) Weekday is any day, Monday through Friday that is not a legal holiday.

(Ord. of 9-18-2017)

Section 30-103. Sound level limitations.

No person shall cause, suffer, allow, or permit a domestic animal or any sound source to create a sound level that exceeds the sound level limits set forth in section 30-104 when measured at or within the perimeter of a structure at the point closest and most accessible to the direction of the sound. If no structure exists, measurements will be taken at or within the perimeter of the real property line of the receiving property. Such a sound source would constitute a noise disturbance.

(Ord. of 9-18-2017)

Section 30-104. Specific noise nuisances.

The following standards shall apply to the activities or sources of sound set forth below:

(a) Music and amplified sound.

(1) No property owner, tenant or an agent or employee of a property owner shall employ any device or instrument at an entertainment venue that creates, or amplifies sound to generate any sound for the purpose of communication or entertainment that is plainly audible at a receiving residential property, including but not limited to: any loudspeaker; bullhorn, amplifier; public address system; musical instrument; radio; or device that plays recorded music.

(2) At the sole discretion of a law enforcement officer or code enforcement officer and as an alternative to making a determination of whether a sound is plainly audible, the following shall apply: A sound pressure level (SPL) reading may be taken at the receiving residential property according to the sound measurement procedures contained herein. In no instance shall the SPL from any entertainment venue music or amplified sound source exceed the following absolute limits except as prescribed herein:

(3) Sound pressure level limits by receiving property (Table 1) Receiving Property Category Time

Receiving Property Category	**Time**	**Sound Level Limit (dBA)**
Residential, public space, institutional, or noise sensitive facility	Daytime: 7:01 a.m. to 11:00 p.m.	70
	Nighttime: 11:01 p.m. to 7:00 a.m.	60

Office, Commercial or business	<u>Daytime:</u> 7:01 a.m. to 11:00 p.m. <u>Nighttime:</u> 11:01 p.m. to 7:00 a.m.	70 65
Industrial or manufacturing	At all times	70

(4) If the noise is an impulsive sound, the fast response setting shall be used and the daytime (7:00 a.m. to 11:01 p.m.) limits of the above table shall be increased by ten (10) dBA.

(5) Provided however, that under no circumstance shall the existence of this SPL standard prevent a violation being found if the sound is plainly audible as set forth in section 30104(a)(1).

(6) 3. In cases where the receiving residential property background sound levels dBA exceed the levels in table 1, in no instance shall the sound pressure level from any entertainment venue amplified sound source exceed the receiving residential property background sound level, except as prescribed herein

(Ord. of 9-18-2017)

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Section 30-105. Exemptions.

(a) The provisions of this article shall not apply to or be enforced against:

1. Noise generated from municipally sponsored or approved celebrations or event
2. Sound by public safety vehicles, emergency signaling devices, or authorized public safety personnel for the purpose of alerting persons to the existence of an emergency;
3. Noise from an exterior burglar alarm of any building, provided such burglar alarm shall terminate its operation within five (5) minutes of its activation if the sound is not intermittent or ten (10) minutes if intermittent;
4. Noise from any automobile alarm, provided such alarm shall terminate its operation within five (5) continuous minutes of its activation if the sound is not intermittent or ten (10) continuous minutes if the sound is intermittent;
5. The generation of sound in situations within the jurisdiction of the Federal Occupational Safety and Health Administration;
6. Noise resulting from any practice or performance sponsored by or associated with the educational process administered by a recognized institution of learning, including, but not limited to band, choir, and orchestral performances;
7. Carillons, chimes or unamplified bells while being used in conjunction with religious services between the hours of 7:00 a.m.—10:00 p.m.;
8. Emergency work approved by the Building Inspector of the City;
9. Surface carriers engaged in commerce by railroad;
10. Events with amplified or un-amplified sound that are operating within the parameters set forth in an approved special events permit as defined in the Code of Ordinances of the City of Commerce, Georgia;
11. Organized band and/or sports league activity sponsored by a school or the City of Commerce that is otherwise in compliance with the Code of Ordinances of the City of Commerce, Georgia.
12. Noise that results from landscaping and lawn maintenance between the hours of 7:00 a.m. and 9:00 p.m.;
13. Noise that results from construction both private and commercial between the hours of 7:00 a.m. and 9:00 p.m.

(b) *Restricted Uses and Activities.* Notwithstanding the provisions of section 30-104 and the exceptions above, the following standards shall apply to the activities or sources of sound set forth below:

1. Non-commercial or non-industrial power tools used for landscaping and yard maintenance shall not be operated between the hours of 9:00 p.m. and 7:00 a.m., unless such activities can meet the applicable limits set forth in section 30-104. At all other times, the limits set forth in section 30-104 do not apply to non-commercial or non-industrial power tools and landscaping and yard maintenance equipment, provided that all motorized equipment is operated with a functioning muffler.
2. Commercial or industrial power tools used for landscaping and yard maintenance shall be operated with a muffler. All motorized equipment used in these activities shall not be operated on a residential property or within two hundred fifty (250) feet of a residential property line, between the hours of 9:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 9:00 p.m. and 9:00 a.m. on weekends, unless:
   I. Such activities are deemed emergency work, or
   II. Such activities meet the limits set forth in section 30-104.

At all other times, the limits set forth in section 30-104 do not apply to commercial or industrial power tools and

landscaping and yard maintenance equipment.

3. Owners and the agents of owners of domesticated animals shall not permit any vocalizations (including barking, baying, howling, crying, or making any other noise) for more than ten (15) continuous minutes without interruption or more than thirty (30) minutes if intermittent. Set by City of Commerce Ordinance 10-12.
4. Personal or commercial vehicular music amplification or reproduction equipment, including, but not limited to boom cars, shall not be operated in such a manner as to be plainly audible at a distance of fifty (50) feet in any direction from the equipment between the hours of 8:00 p.m. and 10:00 a.m. Between the hours of 10:00 p.m. and 8:00 a.m. such equipment shall not be operated in such a manner that it is plainly audible at a distance of twenty-five (25) feet in any direction.
5. Boom boxes, or any similar device, shall not be operated in a public place or public right-of-way in such a manner as to be plainly audible at a distance of fifty (50) feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., such equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction.
6. No amplified sound or outdoor performances (with or without amplified sound) shall be permitted after 10:00 p.m. Sunday through Thursday or after 11:00 p.m. Friday and Saturday. For purposes of this section "outdoor performance" shall include activities conducted indoors or under a roof but open to the outside by means of open windows, doors, screens or other openings but excluding the normal opening and closing of doors for entry and exit.

(c) *Code Enforcement Officers.*

1. Where the provisions of this ordinance require the measurement of sound with the use of a sound level meter, Code Enforcement Officers or Police Officers of the City shall make such measurement.
2. Upon occurrence of a violation of this Article, Officers or police officers having jurisdiction in the area where the violation takes place, may issue a citation/summons for the violation returnable to the Municipal Court of Commerce.

(d) *Procedures for the Determination of Sound Levels.*

1. Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum and fluctuating rate. All noise measurements shall be made at or within the property line of the receiving property, unless otherwise directed in this ordinance or when directly observed by an officer. When instrumentation cannot be placed at or within the property line, the measurement shall be made as close thereto as is reasonable. For the purposes of this ordinance, noise measurements are measured on the A- weighted sound level as applicable, of a sound level meter of standard design and quality.
2. A field check of meter calibration and batteries must be conducted before and after every set of measurements.

(e) *Requests for Temporary Relief or Stay.*

1. Any person requesting temporary relief or a stay from the enforcement of this ordinance shall apply to the city clerk or designee for a special administrative permit for a period of time not to exceed thirty (30) days. The city clerk or designee

has discretion to consider and grant or deny the special administrative permit (with such conditions as may be warranted), if strict enforcement of this ordinance will result in exceptional and undue hardship to the applicant.

2. Applications for special administrative permits shall be on a form prescribed by the city clerk or designee which shall, among other matters, address the nature of the noise, attenuation measures, and the hardships to the applicant and others if the permit is not granted.
3. A special administrative permit may be revoked and the issuance of future permits withheld, if there is a:
    I. Violation of any conditions of the permit;
    II. Material misrepresentation of fact in the permit application; or,
    III. Material change in any of the circumstances relied upon by the city clerk or designee in granting the permit.
4. No special administrative permit shall be granted for amplified sound.
5. No special administrative permit shall be authorized to delete, modify, or change in any manner any requirement imposed as a condition of zoning or as a condition of a special or conditional land use permit imposed by the city council.
6. Appeals of any special administrative permit decision made by the city clerk or designee shall be to the city manager.

Section 30-106. Enforcement Procedures.

The City may prosecute noise related violations by issuance of a city ordinance violation citation:

1. To either the owner or occupier of the residential property from which the noise is generated. For purposes of this ordinance, when only a civil remedy is sought, any occupier of the property is considered to be the authorized agent of the owner, unless the owner affirmatively proves to the court that the occupier was not authorized to be upon the premises. For civil penalties, notice to the occupier is considered notice to the owner.
2. If the origin of the noise generated is a business, the violation citation may be issued in the name of the business (whether incorporated, a sole proprietorship, or a limited liability company), with service of the citation in the name of the business made upon the owner of the business, or a manager or agent of said business. In addition, the owner of the property upon which the business is located may also be served with a citation.
3. If the municipal court finds that this chapter has been violated, the offender cited may be punished as follows:
    I. First Offense: A civil penalty of $100.00
    II. Second Offense: A civil penalty of $300.00
    III. Any further offenses by a criminal penalty of a fine $500.00 and/or incarceration up to six (6) months.
4. In addition to issuing a fine as provided, or in lieu thereof, the Municipal Court Judge may issue an order requiring immediate abatement of any sound source alleged to be in violation of this section. Failure to abate such noise results in contempt of court.
5. No provision of this section shall be construed to impair any common law or

statutory cause of action, or legal remedy therefore, of any person for injury or damage arising from any violation of this section or from other law.

ARTICLE IV. NUISANCES[26]

Section 30-131. 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:

Closing means securing and causing a dwelling, building or structure to be vacated.

Dwellings, buildings, lots or *structures* means any building or structure or part thereof used or occupied for human habitation, commercial, industrial or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, and also includes any building or structure of any design and all premises wherein such building or structure is located.

Owner means the holder of the title in fee simple and every security deed holder of record.

Parties in interest means persons in possession of such property and all individuals, associations and corporations who have interest of record in the county where the property is located in a dwelling, building, lot or structure, including executors, administrators, guardians and trustees.

(Ord. of 10-12-92, § 1-1)

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

Section 30-132. Designation of public officer to exercise statutory nuisance abatement powers.

The chief of police shall assume all of the duties and exercise such powers as may be necessary or convenient to carry out and effectuate the abatement of nuisances, as set forth in this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7—41-2-17. The powers which may be exercised by the chief of police, as the public officer contemplated by this article, in carrying out and effectuating the purpose and provisions of this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7—41-2-17, include, without limitation, the following powers in addition to others granted in this article:

(1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings, lots or structures therein are unfit for human habitation or are unfit for current commercial, industrial or business use;

(2) To administer oaths and affirmations, to examine witnesses and to receive evidence;

(3) To enter upon premises for the purpose of making examinations; provided, however, that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

[26]Cross reference(s)—Nuisance animals, § 10-61 et seq.

State law reference(s)—Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation, O.C.G.A. § 36-61-11; nuisances, O.C.G.A. § 41-1-1 et seq.; authority to demolish structures where drug crimes are committed, O.C.G.A. § 41-2-7; county or municipal ordinances relating to unfit buildings or structures, O.C.G.A. § 41-2-9; abatement by county of hazard from abandoned well or hole, O.C.G.A. § 44-1-14.

(4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this article; and

(5) To delegate any of his functions and powers under this article to such officers and agents as he may designate.

(Ord. of 10-12-92, § 1-2)

Section 30-133. Determination of public officer that dwelling, building, lot or structure is unfit or that a nuisance exists.

The chief of police, as the public officer contemplated by this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7—41-2-17, may determine, under existing ordinances, that a dwelling, building, lot or structure is unfit for human habitation or is unfit for its current commercial, industrial or business use if he finds that conditions exist in such building, dwelling, lot or structure which are dangerous or injurious to the health, safety or morals of the occupants or such dwelling, building, lot or structure; of the occupants of the neighborhood dwellings, buildings, lots or structures; or of other residences of the city; such conditions may include the following (without limiting the generality of the foregoing):

(1) Defects therein increasing the hazards of fire, accidents or other calamities.

(2) Lack of adequate ventilation, light or sanitary facilities.

(3) Dilapidation.

(4) Disrepair.

(5) Structural defects.

(6) Code violations.

(7) Uncleanliness.

(8) Presence of substances, or animals or birds, emitting noxious odor or fumes, rubbish, litter, manure, refuse, rubble or trash, overgrown vegetation, malfunctioning private sewage disposal systems, hazaradous objects or any other condition recognized as a nuisance pursuant to state law.

(9) The presence of junked motor vehicles or parts thereof in such a condition that they constitute a health hazard or unsightly nuisance as contemplated by O.C.G.A. § 26-60-4.

(Ord. of 10-12-92, § 1-3; Ord. No. 93-004, 4-12-93)

Section 30-134. Procedure for abatement of nuisances and other defects.

(a) Whenever a request is filed with the public officer by a public authority, to include the fire department, police department, street department, health department or building inspection department, or at least five residents of the city charging that any dwelling, building, lot or structure is unfit for human habitation or for commercial, industrial or business use, or that a nuisance is present, or whenever it appears to the public officer, on his own motion, that any dwelling, building, lot or structure is unfit for human habitation or is unfit for its current commercial, industrial or business use, or that a nuisance is present, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and any parties in interest in such dwelling, building, lot or structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer or his designated agent at a place within the county in which the property is located therein, fixed not less than ten days nor more than 30 days after the serving of the complaint; that the owner and any parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give

testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(b) If, after such notice and hearing, the public officer determines that the dwelling, building, lot or structure under consideration is unfit for human habitation or is unfit for its current commercial, industrial or business use, or that a nuisance is present, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(1) To abate the nuisance.

(2) If the repair, alteration or improvement of the dwelling, building, lot or structure can be made at a reasonable cost in relation to the value of the dwelling, building, lot or structure, requiring the owner or parties in interest, within the time specified in the order, to repair, alter or improve such dwelling, building, lot or structure, so as to render it fit for human habitation or for current commercial, industrial or business use or to vacate and close the dwelling, building, lot or structure as a human habitation; or in the alternative to remove or demolish such dwelling, building, lot or structure.

(3) If the repair, alteration or improvement of the dwelling, building, lot or structure cannot be made at a reasonable cost in relation to the value of the dwelling, building, lot or structure, requiring the owner or parties in interest, within the time specified in the order, to remove or demolish such dwelling, building, lot or structure.

In no event shall the mayor and council of the city require removal or demolition of any dwelling, building, lot or structure except upon a finding that the cost of repair, alteration, or improvement thereof exceeds one-half the value such dwelling, building, lot or structure will have when repaired to satisfy the minimum requirements of this law. The order of the public official shall provide notice to the owner or parties in interest of their right of appeal under O.C.G.A. § 41-2-13.

(c) If the owner or parties in interest fail to comply with an order to abate a nuisance or to repair, alter, improve or to vacate and close or demolish the dwelling, building, lot or structure, the public officer may cause such dwelling, building, lot or structure to be repaired, altered or improved or to be vacated and closed or demolished; and the public officer may cause to be posted on the main entrance of any dwelling, building, lot or structure so closed a placard with the following words:

> This building or lot is unfit for human habitation or commercial, industrial or business use; the use or occupation of this building or lot for human habitation or for commercial, industrial or business use is prohibited and unlawful.

(d) If the owner fails to comply with any order to abate the nuisance or repair, alter or improve such dwelling, building, lot or structure or remove or demolish the dwelling, building, lot or structure, the public officer may cause the nuisance to be abated or such dwelling, building, lot or structure to be repaired, altered or improved or to be removed or demolished; provided, however, that the duties of the public officer, set forth in subsection (c) of this section and this subsection, shall not be exercised until the city council shall have by ordinance ordered the public officer to proceed to effectuate the purpose of O.C.G.A. §§ 41-2-7—41-2-17 with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation or unfit for its current commercial, industrial or business use, or when a nuisance is present which property or properties shall be described in the ordinance.

(e) The amount of the cost of such abating of a nuisance or repair, alteration or improvement or of vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. The lien shall attach to the real property upon the payment of all costs of abating the nuisance or repair or demolition by the city council and the filing of an itemized statement of the total sum of the costs by the public officer in the office of the clerk of court on a lien docket maintained by the clerk for such purposes. If the dwelling, building, lot or structure is removed or demolished by the public officer he shall sell the materials of such dwelling, building, lot or structure and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior

court by the public officer, shall be secured in such manner as may be directed by such court and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(f) The mayor and council may enforce the collection of any amount due on such lien for the abatement of the nuisance or repair, alteration or improvement or of removal or demolition of dwellings, buildings, lots or structures only in the following manner:

(1) The owner or parties in interest shall be allowed to satisfy the amount due on such lien by paying to the city council within 30 days after the perfection of such lien a sum of money equal to 25 percent of the total amount due and by further paying to city council the remaining balance due on such lien, together with interest at the rate of seven percent per annum, in three equal annual payments, each of which shall become due and payable on the anniversary date of the initial payment made as hereinabove prescribed;

(2) Should the property upon which such lien is perfected be sold, transferred or conveyed by the owner or parties in interest at any time prior to the termination of the three-year period, then the entire balance due on such lien shall be due and payable to the city council; and

(3) Should the amount due on such lien, or any portion thereof, be unpaid after the passage of the three-year period, or upon the occurrence of the contingency provided for in subsection (2) of this section, the city may enforce the collection of any amount due on such lien for alteration, repair, or removal of structures in the same manner as provided in O.C.G.A. § 48-5-358 and other applicable state statutes. This procedure shall be subject to the right of redemption by any person having any right, title or interest in or lien upon the property, all as provided by O.C.G.A. § 48-4-40 et seq.

(Ord. of 10-12-92, § 1-4)

Section 30-135. Service of complaints or orders upon parties in interest and owners of unfit buildings or structures.

(a) Complaints or orders issued by the public officer pursuant to the provisions of this article shall, in all cases, be served upon each person in possession of the property, each owner, and each party in interest; and the return of service signed by the public officer or his agent or an affidavit of service executed by any citizen of this state, reciting that a copy of such complaint or orders was served upon each person in possession of the property, each owner, and each party in interest personally, or by leaving such copy at the place of his residence, shall be sufficient evidence as to the service of such person in possession, owner and party in interest.

(b) If any of the owners and parties in interest shall reside in the state but outside the city limits of the city, service shall be perfected by causing a copy of such complaint or orders to be served upon such party or parties by the sheriff or any lawful deputy of the county of the residence of such party or parties or such service may be made by any citizen; and the return of such sheriff or lawful deputy or the affidavit of such citizen, that such party or parties were served either personally or by leaving a copy of the complaint or orders at the residence, shall be conclusive as to such service.

(c) Nonresidents of this state shall be served by publishing the same once each week for two successive weeks in a newspaper of general circulation within the city limits of the city. A copy of such complaint or orders shall be posted in a conspicuous place on premises affected by the complaint or orders. Where the address of such nonresidents is known, a copy of such complaint or orders shall be mailed to them by registered or certified mail.

(d) If either the owner or any party in interest is a minor or an insane person or person laboring under disabilities, the guardian or personal representative resides in the state outside the city limits of the city or is a nonresident, he shall be served as provided for in subsection (b) or (c) of this section. If such minor or insane person or persons laboring under disabilities has no guardian or personal representative or if such minor or insane person lives outside the city limits of the city or is a nonresident, service shall be perfected by serving such minor or insane person personally or by leaving a copy at the place of his residence which shall be sufficient evidence as to the service of such person or persons; in the case of other persons who live outside of the city or are nonresidents, service shall be perfected by serving the judge of the probate court of the county wherein such property is located who shall stand in the place of and protect the rights of such minor or insane person or appoint a guardian ad litem for such person.

(e) If the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer shall make an affidavit to that effect, then the service of such complaint or order upon such persons shall be made in the same manner as provided in sub

section (c) of this section or service may be perfected upon any person holding himself out as an agent for the property involved.

(f) A copy of such complaint or orders shall also be filed in the proper office or offices for the filing of lis pendens notice in the county in which the dwelling, building or structure is located and such filing of the complaint or orders shall have the same force and effect as other lis pendens notices provided by law. Any such complaint or orders or an appropriate lis pendens notice shall contain a statement to the effect that a lien may arise against the described property and that an itemized statement of such lien is maintained on a lien docket maintained by the city clerk.

(Ord. of 10-12-92, § 1-5)

Section 30-136. Injunctions against order to abate a nuisance, repair, close or demolish unfit buildings or structures.

Any person affected by an order issued by the public officer under this article may petition to the superior court for an injunction pursuant to the provisions of O.C.G.A. § 41-2-13.

(Ord. of 10-12-92, § 1-6)

Section 30-137—30-160. Reserved.

ARTICLE V. WATERSHED PROTECTION PLAN[27]

Section 30-161. Introduction.

(a) The Mountain Creek Reservoir (SCS Structure 11) is located in Banks County, Georgia, and owned by Banks County. The reservoir is a soil conservation service rural water supply structure, and water is supplied to Banks County based on storage between specified elevations. The Grove Creek Reservoir is located in Banks County, Georgia and owned by the city. The reservoir is a soil conservation service flood control structure,

[27]Editor's note(s)—Ord. No. 98-7, §§ I—VIII, adopted Mar. 10, 1998, did not specifically amend the Code; hence inclusion as art. V, §§ 30-161—30-168, was at the editor's discretion.

and water is supplied to the city based on storage between specified elevations. The purpose of this watershed protection plan is to establish criteria pursuant to O.C.G.A. § 12-2-8 for the protection of drinking water watersheds. This protection is necessary for the enhancement of public health, safety and welfare as well as to assure that surface sources of drinking water are of high quality in order to be treated to meet all state and federal drinking water standards. The criteria set forth accomplish this by establishing buffer zones around streams and by specifying allowable impervious surface densities within the identified watersheds.

(b) Secondary objectives are to:

(1) Manage the reservoir and its drainage area in a manner that will conserve the basic resources of air, soil, and water.

(2) Provide for diverse and viable plant, animal, and fish communities.

(3) Give special consideration for the protection of threatened and endangered plant and animal species.

(4) Manage the reservoir to properly establish, enhance, and maintain acceptable fish and wildlife habitat, aesthetic quality, and sustain natural environmental conditions.

(5) Manage use of the reservoir in a manner that provides the least environmental impact.

(6) Provide for the protection of public land and water.

(Ord. No. 98-7, § I, 3-10-98)

Section 30-162. Definitions.

For purposes of this watershed protection plan, certain words or terms used herein are defined as follows:

Buffer means a natural or enhanced vegetated area with no or limited minor land disturbances, such as trails and picnic areas. Buffer setbacks are specified in sections 30-165 and 30-166.

Corridor means all land within the buffer areas and other setback areas specified in sections 30-165 and 30-166 of this plan.

Impervious surface means a manmade structure or surface which prevents the infiltration of stormwater into the ground below the structure or surface. Examples are buildings, roads, driveways, parking lots, decks, swimming pools, or patios. No impervious surface areas are allowed within the reservoir buffer area as specified in subsection 30-167(2).

Land disturbing activity means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. Land disturbing activity shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family residence, and the cutting of firewood for personal use.

Perennial stream means a stream which flows throughout the whole year as indicated on a USGS Quad map.

Reservoir boundary means the edge of a water supply reservoir defined by its normal pool level.

Utility means public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, stormwater systems and railroads or other utilities identified by Banks County, Georgia.

Water supply reservoir means a governmentally owned impoundment of water for the primary purpose of providing water to one or more governmentally owned public drinking water systems.

Water supply watershed means the area of land upstream a governmentally owned public drinking water intake.

Water supply watershed protection plan is a land use plan prepared and adopted by Banks County, Georgia, for the protection of the quality of drinking water obtained from the water supply watershed.

(Ord. No. 98-7, § II, 3-10-98)

Section 30-163. Coverage area.

These criteria shall apply to all governments located within the Grove Creek Watershed and the Mountain Creek Watershed. These criteria do not apply to watersheds not used for public drinking water supply.

(Ord. No. 98-7, § III, 3-10-98)

Section 30-164. Exemptions.

The following activities shall be exempt from the plan:

(1) Utilities from the stream corridor buffer and setback area provision of the watershed protection plan in accordance with the following conditions if the utilities to be located in the buffer or setback areas cannot feasibly be located outside these areas:

a. The utilities shall be located as far from the stream bank as reasonably possible.

b. The installation and maintenance of the utilities shall be such to protect the integrity of the buffer and setback areas as best as reasonably possible.

c. The utilities shall not impair the quality of the drinking water stream.

(Ord. No. 98-7, § IV, 3-10-98)

Section 30-165. Minimum criteria.

The Grove Creek Watershed and the Mountain Creek Watershed are classified as a small water supply watershed. Water supply watershed is one that contains less than 100 square miles of land within the drainage basin upstream of a governmentally owned public drinking water supply intake. The Grove Creek Watershed and the Mountain Creek Watershed contains less than 100 square miles of drainage area upstream of the raw water intakes.

(1) *Stream corridor criteria.*

a. The perennial stream corridors of a small water supply watershed within a seven-mile radius upstream of a governmentally owned public drinking water supply intake or water supply reservoir are protected by the following criteria:

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

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

3. Septic tanks and septic tank drain fields are prohibited in the setback area of subsection a.2. above.

b. The perennial stream corridors within a small water supply watershed and outside a seven-mile radius upstream of a governmentally owned public drinking water supply intake or water supply reservoir are protected by the following criteria:

1. A buffer shall be maintained for a distance of 50 feet on both sides of the stream as measured from the stream banks.
2. No impervious surface shall be constructed within a 75-foot setback area on both sides of the stream as measured from the stream banks.
3. Septic tanks and septic tanks drain fields are prohibited in the setback areas of subsection b.2. above.

c. The following criteria apply at all locations in a small water supply watershed:

1. No sanitary landfills are allowed in the drainage area of the reservoirs.
2. New hazardous waste treatment or disposal facilities are prohibited.
3. The impervious surface area, including all public and private structures, utilities, or facilities, of the entire water supply watershed shall be limited to 12 percent, or existing use, whichever is greater. Determination of compliance of this subsection c.3. shall be made by the Banks County Zoning Administrator by comparison of proposed development impervious area and existing open space of the reservoir drainage area. The total impervious area ration shall be calculated at time of adoption of this article and maintained in the office of the zoning administrator.
4. All permitted and acceptable land disturbing activities will be vegetated or revegetated immediately with appropriate grasses or legumes.
5. Harvesting of forest products will be performed in accordance with a harvesting plan agreed to by the Georgia State Forestry Commission and an erosion and sedimentation control plan approved by the soil conservation service.
6. Forestry management within the drainage areas will follow the Georgia State Forestry Commission's Best Management Practice Guidelines for Streamside Management Zones, Stream Crossings, Access Roads and Their Construction, Timber Harvesting, Site Preparation, Reforestation and Forest Protection (Prescribed Burning, Firelines, and Chemical Fire Retardant).
7. No new commercial livestock operations will be allowed in the drainage areas. Commercial livestock operation is defined as a private or public entity in which livestock are raised for the sole purpose of selling, trading or bartering the livestock or its by-products to the marketplace and the gross revenue of said operations is greater than $5,000.00 per calendar year. Present operations will be allowed to continue only at their present production levels. Agricultural activity shall comply with Georgia Pesticide Act of 1976, Georgia Pesticide and Use Act of 1976, and Georgia Laws 1982, House Bill 1780, (O.C.G.A. § 2-1-4).
8. No new land application of animal waste will be allowed without approved nutrient management plan. Such plan will be prepared by either the Soil Conservation Service or the UGA Cooperative Extension Service.
9. Broad use of chemical agents such as pesticides are prohibited. Use of pesticides shall be in accordance with Georgia Pesticide Act of 1976, Georgia Pesticide and Use Act of 1976, and Georgia Laws 1982, House Bill 1780, (O.C.G.A.§ 2-1-4).
10. Fires or burning on the shoreline are not authorized regardless of the lake level.
11. Lot sizes within 1,000 feet of the reservoir pool will be no less than two acres and contain only single-family housing units.

12. Commercial and industrial developments shall be restricted to a lot size minimum of five acres within the defined drainage area of the reservoir.

13. Permitting for activities in the watershed will be governed by this section, administered by the Banks County Planning Commission. It shall be the responsibility of every land user, developer or builder to present plans for land use alternations within the drainage areas to the Banks County Planning Commission for review and approval. Plans for commercial projects shall bear a stamp by a state registered engineer and shall include at a minimum the calculated total impervious area(s) and shall have a detention/retention pond to control stormwater runoff from the site.

(Ord. No. 98-7, § V, 3-10-98)

Section 30-166. Reservoir management plan—Grove Creek Reservoir.

(a) *Reservoir management.* The 307.4-acre Grove Creek Reservoir was constructed in 1978 as a flood relief and control project by the United States Department of Agriculture, Soil Conservation Service (USDA SCS). The city maintains the reservoir. The reservoir shall be governed by a management plan which addresses the recreational use of the reservoir and the maintenance of the buffer around the reservoir. The Grove Creek Reservoir shall be specifically monitored for water quality standards by the city. The reservoir shall be governed by a management plan which addresses the recreational use of the reservoir and the maintenance of the buffer around the reservoir.

(1) *Recreational uses.* The following recreational uses are either prohibited or restricted to protect the water quality of the reservoir for drinking purposes while optimizing its recreational benefits. Public recreation is not a purpose of the Grove Creek Reservoir and such recreation is not encouraged.

a. Swimming is prohibited.

b. Fishing is allowed.

c. Boating will be limited to electric, wind and manual boats only. No floating facilities of any type will be allowed on the reservoir pool.

d. Boat docks or similar facilities are prohibited. Existing docks, connecting ramps or boat launch ramps may continue to exist without further improvements or enlargements.

e. Public access is not provided other than those existing legal rights-of-way.

f. No special events permits will be issued.

g. No private shoreline use permits will be issued.

(2) *Buffer requirements.* A buffer shall be maintained for a distance of 150 feet from the normal pool elevation of the reservoir. Should questions concerning the normal pool elevation arise, it shall be resolved by an engineering survey on a case by case basis. The 150-foot buffer shall not be encroached on by any impervious development. Underbrush may be cleared; however, no person shall remove more than 50 percent of the trees eight inches or more in diameter at a point 4.5 feet from natural grade.

(3) *Reservoir monitoring.* The Grove Creek Reservoir is owned fee simple by the city. The city will be responsible for the management of recreational uses and the buffer requirements as defined in the watershed protection plan. The city shall be responsible for the monitoring of the water quality of the watershed. The city shall establish a monitoring plan as follows:

a. General inspection of the Grove Creek Watershed once every three years to monitor urban and rural development.

b. Aerial inspection of the Grove Creek Watershed once every five years to monitor urban and rural development.

c. Establishment of three water quality monitoring points along the perennial streams feeding the reservoir in coordination with GA DNR EPD Water Quality Program.

d. Sampling of water samples from the three monitoring points will be coordinated between the city and EPD for report scheduling and parameters with copies of said report filed with the EPD Water Resources Program.

(b) *Enforcement.* Violations of the criteria set forth in this plan for protecting the water quality of the Grove Creek Reservoir shall be enforced by Banks County, assigns or duly authorized agents. All incidents of littering, water pollution, or any other act which threatens water quality, after the first warning, shall be punishable by the maximum fine of $1,000.00 allowed by law in the magistrate court pursuant to O.C.G.A. § 15-10-60 et. seq. This is in addition to any other punishment provided by other local, state or federal law.

(Ord. No. 98-6, §§ I, II, 11-23-98; Ord. No. 98-7, § VI, 3-10-98)

Section 30-167. Same—Mountain Creek Reservoir.

The 50.0-acre Mountain Creek Reservoir was constructed in 1993 as a Rural Water Supply project by the United States Department of Agriculture, Soil Conservation Service (USDA SCS). Banks County maintains the reservoir. The reservoir shall be governed by a management plan which addresses the recreational use of the reservoir and the maintenance of the buffer around the reservoir.

(1) *Recreational uses.* The following recreational uses are either prohibited or restricted to protect the water quality of the reservoir for drinking purposes while optimizing its recreational benefits. Public recreation is not a purpose of the reservoir and such recreation is not encouraged.

a. Swimming is prohibited.

b. Fishing is allowed.

c. Boating will be limited to electric, wind and manual boats only. No floating facilities of any type will be allowed on the reservoir pool.

d. Boat docks or similar facilities are prohibited. Existing docks, connecting ramps or boat launch ramps may continue to exist without further improvements or enlargements.

e. Public access is not provided other than those existing legal rights-of-way.

f. No special events permits will be issued.

g. No private shoreline use permits will be issued.

(2) *Buffer requirements.* A buffer shall be maintained for a distance of 150 feet from the normal pool elevation (985 feet MSL) of the reservoir. Should questions concerning the normal pool elevation arise, it shall be resolved by an engineering survey on a case by case basis. The 150 foot buffer shall not be disturbed nor shall not be encroached on by any impervious development.

(3) *Reservoir monitoring.* Banks County will be responsible for the management of recreational uses and the buffer requirements as defined in the watershed protection Plan. Banks County shall be responsible for the monitoring of the water quality of the watershed. The city shall establish a monitoring plan as follows:

a. General inspection of the Mountain Creek Watershed annually to monitor urban and rural development.

b. Aerial inspection of the Mountain Creek Watershed once every three years to monitor urban and rural development.

c. Establishment of three water quality monitoring points along the perennial streams feeding the reservoir in coordination with GA-DNR-EPD Water Quality Program.

d. Sampling of water samples from the three monitoring points will be coordinated between the County and EPD for report scheduling and parameters with copies of said report filed with the EPD Water Resources Program.

(Ord. No. 98-7, § VII, 3-10-98)

Section 30-168. Enforcement.

Violations of the criteria set forth in this plan for protecting the water quality of the Grove Creek and Mountain Creek shall be enforced by Banks County, Georgia, assigns or duly authorized agents. All incidents of littering, water pollution, or infringement of the buffer zone or any other act which threatens water quality, shall be punishable by the maximum fine of $1,000.00 allowed by law in the magistrate court pursuant to O.C.G.A. § 15-10-60 et. seq. This is in addition to any other punishment provided by other local, state or federal law.

(Ord. No. 98-7, § VIII, 3-10-98)

Section 30-169—30-180. Reserved.

ARTICLE VI. WATER CONSERVATION PLAN[28]

Section 30-181. System management.

Water produced at the water plant from 1991 to 1994 is indicated in Table 1. In Table 2 are records for a 12-month period indicating raw, produced, sold and unaccounted.

(1) *Unaccounted for water.* The city has averaged per month a total of 344,658 gpd of unaccounted for water or 39.2 percent of total water produced from January, 1994, to December, 1994. The city has discovered in April, 1995, a bypass water connection to the Banks County Water System. A meter was in place; however, only a portion of the total amount used was registered. Banks County water use averaged 800,000 to 900,000 gallons per month in 1994.

Since the discovery and disconnection of the bypass piping, the average daily reading indicated a total of 83,000 gallons was used by Banks County. The monthly average of water produced and water sold by the city in 1994 is 37.225 million gallons and 26.74 million gallons respectively. Using the most recent metered flow to Banks County, less the average monthly billing, the corrected monthly usage by Banks County is 1.7 million gallons. Thus, the average corrected UAW for 1994 is 23.6 percent.

The filter plant uses an average of 7.5 percent water (as detailed in subsection 30-182(b)). Fire fighting and hydrant flushing account for approximately 1.6 percent of water produced. Therefore, the corrected 1994 UAW average is about 14.5 percent. Please refer to Table 1 and Table 2.

(2) *UAW elimination programs.*

a. *Leak detection and elimination.* The city currently performs leak detection activity by visually checking main water lines. Additional leak detection and elimination measures include the calibration of all meters greater than two inches in size that are three years or older. Random

[28]Editor's note(s)—Ord. No. 98-8, §§ I—XI, adopted Nov. 23, 1998, did not specifically amend the Code; hence inclusion as art. VI, §§ 30-181—30-191, was at the editor's discretion.

sampling of water meters by selecting one per 25 customers to establish meter types, age of meter and recalibration to determine loss of water. The city also maintains a meter change-out program, whereby old meters are exchanged for recalibrated meters every five to seven years.

b. *Water distribution system map.* The city maintains accurate water distribution maps of the entire system.

c. *Meter maintenance.* The city maintains an active program of testing and calibration of all water meters. Testing procedures shall be as follows:

TESTING

1. All valves shall be tested at the point of manufacture and made driptight when tested under the hydrostatic head specified. After the valves are set in place and are grove to operate, the city shall test them under the rated working pressure and conditions and any valve found to leak shall be made watertight or airtight and if found to be of faulty design shall be satisfactorily repaired or replaced by the city.

2. Existing nontouch meters shall be tested in the field as directed by the engineer and/or owner. In addition, existing nontouch meters may be removed and replaced without testing as directed by the engineer and/or owner. Field testing will compare the customer meter to a calibrated meter (a meter that is certified to be accurate) registration. A meter test kit shall include the following:

    (a) A calibrated meter;

    (b) Meter yokes;

    (c) An on-off valve;

    (d) A flow rate control valve;

    (e) A meter jumper;

    (f) Calibration curves; and

    (g) A supply hose.

Before testing meter make sure the meter is located where splashing water will not cause any property damage.

Examine the customer's meter. Make sure that the meter is the correct model and that it is installed in the correct direction. The city will notify customers in writing three days before their service will be interrupted.

Setting up for the test shall be as follows:

1. Turn off the water flow to the meter.

2. Remove the customer's meter.

3. Attach a hose to the water supply and flush briefly.

4. Connect the supply hose to the calibrated meter.

5. Install the customer's meter downstream from the test meter to avoid sediment damage to the calibrated meter.

6. Connect the drain hose to the customer's meter.

Performing the field test:

1. Turn on the supply, the on-off valve, and open the flow rate valve. Flush briefly to be sure all air is removed form the lines.

2. Look for problems with the customer's meter.

3. Adjust the flow rate with the flow rate valve to two gpm (gallons per minute). Time it for one minute to get the correct flow.

4. Close the on-off valve when the hand on the calibrated meter reaches "o."

5. Record the exact reading on the customer's meter.

6. Open the on-off valve. Allow ten gallons to run through the calibrated meter, then close the on-off valve immediately. Check the accuracy of the meter. For ten gallons, each mark on the dial equals 1.0 percent accuracy.

7. Repeat the test for 15 gpm. Allow 100 gallons to run through the meter. This will take about seven minutes. The hand should make ten complete revolutions. Check the accuracy of the meter. For 100 gallons, each mark on the dial equals 0.1 percent accuracy.

8. Repeat the test for one-quarter gpm. Allow ten gallons to run through the meter. This will take about 40 minutes.

The city shall record all three tests and determine the percent accuracy for each test. This information shall be given to the water superintendent for evaluation and determination of which meters are defective and need replacement. The city shall be sure to identify each meter location by address or other means acceptable to the water superintendent.

d. *Tank overflow.* The 1.5-gallon storage tanks have altitude valves, thereby preventing inadvertent tank overflows.

e. *Flushing programs.* The city will utilize a flushing program for fire hydrants and fire lines. The program shall be accomplished by a comprehensive flushing of the water distribution system, including fire lines on an annual basis. The program may be supplemented by additional flushing as necessary. The flushing program shall encompass the following steps:

1. Begin at the supply source working at the first hydrant in the system. Flow water through the streamer nozzle for a duration long enough to empty the pipe section between the source and the hydrant or until the water is clear.

2. Proceed to the next hydrant in line. If a branch line extends from the main line between the two hydrants, close the valves to those branch lines until the main line is flushed. Do not close the first hydrant completely until the second hydrant is opened. Flow water through the hydrant as described in step 1.

3. Continue the flushing of all lines moving in a direction away form the supply source until all line sections have been flushed.

f. *Unauthorized use.* No person is allowed to use water from any unmetered distribution source.

g. *Unmetered service connections.* There are no unmetered service connections.

(3) *Interconnections of distribution system.* There are three interconnections for the sale of water from the city: One with Banks County, one with Jackson County, and the other to the City of Maysville. A copy of the Agreement is provided in Appendix A1 and A2 [on file in the office of the city clerk].

(4) *Additional system management activities.* The city maintains a variety of programs designed to aid in the detection of leaks, maintenance and replacement of water meters and water system flushing. It is the desire of the city that each of these programs help to reduce the amount of unaccounted for water loss each month by a goal of ten percent. A ten percent reduction in UAW would result in approximately ten MG per month reduction in produced water. This goal can be achieved by effective monitoring of the water system through:

a. Reporting all leaks to the water superintendent immediately and isolating the leak by closing appropriate valves.

b. Preventative repairs and upgrades to the system.

c. Scheduled meter testing and replacement.

d. Scheduled hydrant and line flushing.

e. Efficient water plant operation.

TABLE 1

1994
CITY OF COMMERCE
AMOUNT OF WATER IN MILLION GALLONS PER DAY

	RAW	Produced/Finish	SOLD	UAW	% UAW
January	43	39.4	25.9	13.5	34.3
February	34	32.0	32.2	+0.2	0
March	39	35.0	23.5	11.5	32.9
April	37	35.0	22.6	12.4	35.4
May	39.8	37.2	24.8	12.4	33.3
June	41	36.5	26.3	10.2	27.9
July	43	39.8	26.7	13.1	32.9
August*	46	42.8	27.2	15.6	36.4
September	42	38.0	29.6	8.4	22.1
October	41	39.0	29.5	9.5	24.4
November	39	36.0	26.2	9.8	27.2
December	39	36.0	26.4	9.6	26.7
	483.8	446.7	320.9	125.8	39.2%

* Peak Month

TABLE 2

CITY OF COMMERCE

	1994 12-Mo. Avg. Jan. 94—Dec. 94
Avg. produced	37.225
Avg. sold Banks Co.[1] (adjusted)	26.74 + 1.70 28.44
Total sold (adjusted)	28.44
Avg. produced - Avg. sold	
Water loss	8.785
Water loss - Water production[2]	
UAW	5.398

UAW + Avg. produced	
% UAW	14.5%

(1) Banks County—Assumed use of 83,000 gallons per day minus metered water for calculated time period.

1994 January—December

83,000 gpd × 365 days ;div; 12 months	=	2,524,583 mon.
Metered water January—December 1994 avg.	=	827,971
Adjusted usage	=	1,696,612 gal.

(2) Water production/usage accounted for:

	Percent of Production
Backwash water	3.8%
Settling basin	1.7%
Laboratory/feeder water	2.0%
Fire/hydrant flush	1.6%
Total	9.1%

(Ord. No. 98-8, § I, 11-23-98)

Section 30-182. Treatment plant management.

(a) *Meters:*

	Type	Condition	Calibration Frequency
Raw water	Flow tube	Fair	Annually
Finished water	Propeller	New	Annually

(b) *Analysis of in-plant water use as a percentage of total production.* The treatment plant use of production water is as follows based upon the month of April 1995:

	Gallons Per Day	Percent of Total Plant Production
Laboratory and feeder water	829,000 gpd	2.0%
Conventional plant		
a) Settling basin Maintenance	689,000 gpd	1.7%
b) Filter backwash	1,481,000 gpd	3.8%
Total	40,000,000 gpd	7.5%

New meters were added in 1973 to measure finished water and backwash water. In 1974, a new meter was added to measure water used by the laboratory, chemical feeders, restroom, etc. These meters were added by the city in order to study and deep track of in-plant water use. Filter loss of head and rate of flow indicators were replaced in

1993 in order to provide information to reduce the frequency of backwashing. One pair (two filters) were cleaned, filter bottoms inspected and the media replaced in April 1995. The city is requesting a high rate for those filters and to subsequently rehab the other pair of filters. This should reduce the frequency of filter backwashing.

(c) *Sludge holding ponds and pumps.* Sludge holding ponds and pumps to recycle the supernate are designed and are anticipated to be implemented in 1999.

(Ord. No. 98-8, § II, 11-23-98)

Section 30-183. Rate making policies.

(a) *Listing of all metered and nonmetered connections.*

(1) There are no nonbilled services in the city. All water services are required to be metered and recorded monthly. The city does not maintain a listing by number of meters for each class of customer.

(2) The city has the following service classes as follows:

a. Inside water customers includes residential, commercial and industrial users inside city limits.

b. Outside water customers includes residential, commercial and industrial users.

c. Wholesale customers:

1. City of Maysville.

2. Banks County.

(b) *Rate structure.* The water and sewer rates are included as appendix B [on file in the office of the city clerk].

(c) *Second meters.* The city charges a minimum rate for the first 3,000 gallons used and a flat rate per 1,000 gallons or portions thereof over 3,000 gallons. The City of Maysville is charged a flat rate per 1,000 gallons consumed and Banks County is charged based on inside city rates.

(d) *Price policies.*

(1) There are no surcharges, discounts or demand charges other than those listed above.

(2) The water system is financially self-supporting.

(3) The water system is not subsidized by nonwater/sewer revenues.

(Ord. No. 98-8, § III, 11-23-98)

Section 30-184. Establishment of water use priorities.

The city will operate its water system based on a customer use basis. This priority use system shall be in accordance with the city drought contingency plan, section 30-212, is hereby referenced and made part of this water conservation plan. Please see appendix C [on file in the office of the city clerk].

(Ord. No. 98-8, § IV, 11-23-98)

Section 30-185. Plumbing ordinance.

The city has adopted a water conservation ordinance requiring the use of ultra-low flow plumbing fixtures. This ordinance became effective on June 30, 1991. A copy of said ordinance is attached as appendix D [on file in the office of the city clerk].

(1) *Irrigation system.* The city does not currently have restrictions on outdoor watering or landscape irrigation systems.

(2) *Unauthorized use prevention.* No person is allowed to use water without prior authorization and proper metering. System usage is monitored daily.

(Ord. No. 98-8, § V, 11-23-98)

Section 30-186. Recycle-reuse.

Recycle-reuse of treated wastewater. There is no current or planned use of recycled of treated wastewater from the city wastewater treatment facility.

(Ord. No. 98-8, § VI, 11-23-98)

Section 30-187. Public education.

(a) Current education programs. The city has used various programs to increase public awareness for water conservation. The city adopted the Ultra Low Flow Plumbing Ordinance on June 30, 1991. All construction, residential and commercial, since then has been required to utilize ultra-low flow fixtures.

(b) Future education programs. The city will publish in the local newspaper, the policies, procedures and the priority use system. Said advertisement shall be published at least once per year. Additionally, four times a year the city will issue printed messages in the billing statement to all customers about water conservation.

(c) During droughts or other water shortage emergencies, notices will occur in each publication of the local newspaper, and radio announcements will be made at least once per day.

(d) To cultivate a general appreciation for and to encourage the prudent use of water, the city will launch a public education effort by holding public meetings. The purpose is to solicit public input and ideas for water conservation programs.

(e) The city manager shall establish a series of public meeting dates within six months of approval of the water conservation plan. Public comments received at the public meetings shall be collected and reviewed by the city manager or his designee. Information received relative to water conservation programs that have been proposed or suggested will be prioritized by the office of the city manager.

(f) At the conclusion of the public meetings, all water conservation education programs as proposed, will be presented to the city council for approval. Implementation of the programs shall be on an annual basis at the recommendation of the city manager. The program implementation shall strive to implement three programs within the first three years. A new program shall be added each year thereafter.

(g) Several public education programs are being considered such as:

(1) *Providing retro kits to existing homeowners.* These kits would replace older plumbing fixtures with items such as low-flow showerheads, faucet aerators, toilet tank water displacement bags, and other water-conserving devices. For every seven homes successfully retrofitted, the water use of one new home is realized.

(2) *Newsletter.* A quarterly newsletter that will include landscaping tips, guidelines for drought-tolerant gardens, other water conservation issues and the need for conservation.

(3) *Wastewatchers.* A dedicated staff to follow up on customer reports of water waste, leaks, and to respond to consumer questions.

(4) *Free water surveys.* The city will offer free surveys of indoor and outdoor water use to help residential customers increase water use efficiency and lower their water bills. The survey covers faucet flow rates, toilet flushing volumes, irrigation system efficiency and maintenance practices, and how to read the water meter and check for leaks.

Free water-conserving devices such as low-flow showerheads are offered during the survey.

(5) *For business and industry.* Free surveys of water use and conservation opportunities are offered to commercial and industrial customers in the city service area. Following the survey, customers receive a written report detailing how water is used in their facility and offering conservation recommendations.

(h) Additional programs to be implement are provided below:

(1) *Pamphlets and videos.* The city would utilize pamphlets and a water conservation video from the AWWA. These would be made available to the county elementary schools, grades K through 3, for educational training.

(2) *School program.* Provide student activity books and teacher guides on a variety of water supply and conservation topics are provided to county elementary schools.

(3) *Speakers bureau.* Speakers made available to make presentations to schools, community groups and professional organizations.

(4) *Facility tours.* Tours of the water and wastewater facilities to be conducted and their availability are made known to local schools and community groups.

(5) *For business and industry.* Plans for commercial and industrial new construction to be reviewed for conservation opportunities at the time of application for water service.

Specifically, the following implementation schedule shall be used:

	Implementation Date
2 Water Conservation programs	December 1999
1 Water Conservation program per year for next 3 years	December 2000
	December 2001
	December 2002

(Ord. No. 98-8, § VII, 11-23-98)

Section 30-188. Progress report.

(a) *Twelve-month progress report.* The city will submit a progress report 12 months after approval of the water conservation plan by the EPD. The report shall outline actions and/or improvements made to conserve water and reduce water loss in the system.

(b) *Five-year progress report.* The city will submit a progress report five years after approval of the water conservation plan by the EPD. The report shall document water savings achieved by the water system through improvements such as leak detection/repair, meter installation, calibration, or replacement, summer surcharges, and enforcement of ultra-low flow plumbing ordinance.

(Ord. No. 98-8, § VIII, 11-23-98)

Section 30-189. Water use data.

The city will submit an annual water use report in conjunction with an annual report for unaccounted for water to the EPD. Please refer to Table 2 for the previous 12-month report of UAW.

(1) *Analysis of water use.* The city does not list or track water use by individual classes. All customers are grouped together and shown as either inside or outside city limits. Thus two categories are established for billed water users.

There are two wholesale customers, one is the City of Maysville and the other is Banks County. The following represents the percentage each of the four main categories of metered water:

Inside city	68.4%
Outside city	19.3%
City of Maysville	3.5%
Banks County	8.8%

Please refer to Table 3.

TABLE 3

CITY OF COMMERCE

1994 water usage	(All in millions of gallons)
1994 raw water (withdrawn)	483.8
1994 water produced	446.7
1994 water sold (adjusted)	351.2
1994 annual avg. daily raw	1.344
1994 annual avg. daily produced	1.241
1994 annual avg. daily sold (adjusted)	0.962
August 1994 peak month avg. daily	
Peak raw	1.48
Peak finish	1.38
Peak sold (adjusted)	0.983
August 11, 1994 Peak Day	
Peak day (finish)	1.7
Peak day (raw)	1.9

December 1994 No. of Customers and Annual Average Monthly Usage

	# of gal.	%
Inside—1921	19,584,131	68.4

Outside—381	5,522,342	19.3
Banks County	2,524,583	8.8
City of Maysville	1,010,325	3.5
	28,641,381	100.0

(2) *Average residential GPD per capita.* The population for the city in 1990 was 4,108. The Northeast Georgia Regional Development Center has projected the future population growth based on the average annual percentage growth rate which occurred from 1980 to 1988 will continue through the year 2020. Applying an annual growth rate of 1.5 percent, the population of the city will be 6,409 in the year 2020.

In 1994 the estimated city population was 4,358 as projected by the Northeast Georgia Regional Development Center (NGRDC). Assuming that all residents receive water service from the City, and including those residents served in Jackson County it is estimated that 809,886 gallons per day of water were consumed in 1994 by residents. This equates into approximately 155.1 gallons per day per capita consumed.

	Water sold (gpd)	Population
Inside	631,746	4,358
Outside	178,140	864
Total:	809,886	5,222
	809,886 GPD/5,222 = 155.1 gpd	

(Ord. No. 98-8, § IX, 11-23-98)

Section 30-190. Long range planning.

Water conservation for long term water demand and supply planning:

(1) *Per capita projections.* In general, per capita water use increases as an area urbanizes. According to the U.S. Geological Survey, this increase is around one gpcd per year in the southeast. However, water conservation efforts such as use of ultra-low flow plumbing fixtures that encourage conservation has recently been implemented. To account for these and future water conservation efforts, it was estimated that the increase in per capita usage would be 0.5 gpcd per year. The increase in per capita use of 0.5 gpcd/year results in a per capita rate of 167.6 gpcd in year 2020.

(2) *Population projections/population served.* From previous reports the population projections for Jackson County and the city are as follows:

Year	Jackson County	Commerce
1995	33,900	4,423
2000	39,200	4,763
2005	41,500	5,128
2010	52,300	5,522
2015	55,300	5,949
2020	69,700	6,409

In 1995, the total persons served from residential meters is estimated to be: City of Commerce, 4,423; unincorporated Jackson County, 864. This equates to a total of 5,287 persons in 1995.

In the future, all persons in the City of Commerce and Milner will continue to be served, plus an estimated increase in unincorporated Jackson County. Please refer to Table 5.

(3) *Water use projections.* It is assumed the city's unaccounted for water (UAW) in the future will be by a factor of ten percent (see subsection 30-181(4)). As efforts are made to reduce this rate, additional age of pipes may result in additional leaks. The following notes and assumptions are made to project future water consumed.

a. *City of Commerce.*

1. Population to be served as shown in Table 5.

2. GPCD to increase 0.5 gpd as discussed in subsection (1) above.

b. *Banks County.* Banks County used an average of 8.8 percent of all water in 1994. This compares to about 10.1 percent of all water sold to inside and outside customers of the city. It is assumed that Banks County will remain using water at the same rate of 10.1 percent of water sold in the city.

c. *City of Maysville.* The City of Maysville water consumption fluctuates throughout the year. In 1994, Maysville consumed approximately 3.5 percent of all water sold. Compared to water sold to inside and outside customers of the city, it is about four percent. It is assumed that the City of Maysville will remain using water at the same rate of four percent of water sold in the city.

d. *Jackson County.* Commerce begin selling water to Jackson County for redistribution and resale by Jackson County in 1995 at a minimum rate of 50,000 gallons per day. It is assumed that this would increase at five percent annually.

Presented in Table 6 are water consumed (sold) projections. Presented in Table 7 are water produced and water withdrawn projections, based upon factored water sold volumes as indicated in Table 7.

In summary, the 20-year projected maximum month daily withdrawal rate is 2.5 MGD. The peak day during this month is estimated to be 3.75 MGD.

TABLE 5
ESTIMATED FUTURE POPULATION TO BE SERVED

Year	City of Commerce	Jackson[(1)] County	Total Pop. Served
1995	4,423	864	5,287
2000	4,763	930	5,693
2005	5,128	1,001	6,128
2010	5,522	1,078	6,600
2015	5,949	1,162	7,111
2020	6,409	1,252	7,661

[(1)] Includes unincorporated areas adjacent to City of Commerce

TABLE 6
CITY OF COMMERCE PROJECTED ANNUAL AVERAGE SOLD FOR CATEGORY USER (IN MGD)

Year	Population Served	Gallons Per Day per Capita	City of Commerce[1]	Banks Co.	Maysville	Jackson County	TOTAL
1995	5,287	155.1	0.820	0.083	0.033	0.050	0.986
2000	5,693	157.6	0.897	0.091	0.036	0.053	1.076
2005	6,128	160.1	0.981	0.099	0.039	0.055	1.175
2010	6,600	162.6	1.073	0.108	0.043	0.058	1.283
2015	7,111	165.1	1.174	0.119	0.047	0.061	1.401
2020	7,661	167.6	1.284	0.130	0.052	0.064	1.529

[1] Includes unincorporated Jackson County adjacent to city

TABLE 7
PROJECTED MAXIMUM WITHDRAWAL (IN MILLION GALLONS PER DAY)

Year	Annual Avg. Sold	Annual Avg. Produced[1]	Maximum Month Produced[2]	Annual Avg. Withdrawn[3]	Maximum Month Withdrawn[4]
1995	0.986	1.334	1.483	1.444	1.590
2000	1.076	1.456	1.619	1.577	1.736
2005	1.175	1.589	1.767	1.721	1.895
2010	1.283	1.735	1.930	1.879	2.069
2015	1.401	1.895	2.107	2.052	2.259
2020	1.529	2.069	2.301	2.241	2.466

Notes:

(1) Annual average produced: Annual average sold factored by ratio sold to produced in 1994.

434.1/320.9 = 1.353 ([UAW = 125.8 MG in 1994 × 10% reduction = 12.6 MG.] [446.7 MG Produced - 12.6 MG = 434.1 MG])

(2) Maximum month produced annual average produced factored by ratio of peak month to annual average in 1994.

1.38/1.241 = 1.112

(3) Annual average withdrawn annuaul average produced factored by ratio of withdrawn to produced.

483.8/446.7 = 1.083

(4) Maximum month withdrawn maximum month produced factored by ratio of withdrawn to produced (1.072).

(Ord. No. 98-8, § X, 11-23-98)

Section 30-191. Enforcement.

Violations of the criteria set forth in this plan shall be enforced by the city, assigns or duly authorized agents. All incidents of littering, water pollution, or any other act which threatens water quality, after the first warning, shall be punishable by the maximum fine of $1,000.00 allowed by law in the magistrate court and/or the city recorder court pursuant to O.C.G.A. § 15-10-60 et seq. This is in addition to any other punishment provided by other local, state or federal law.

(Ord. No. 98-8, § XI, 11-23-98)

Section 30-192. Restriction on outdoor water of landscape.

(a) Outdoor watering for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants in the City of Commerce water service area may occur only between the hours of 4:00 p.m. and 10:00 a.m.; provided, however, that this limitation shall not create any limitation upon the following outdoor water uses:

(1) Commercial raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or poultry; the commercial production or storing of 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, ratites, and turkeys; producing plants, trees, fowl, or animals; or the commercial production of aquacultural, horticultural, dairy, livestock, poultry, eggs, and apiarian products or as otherwise defined in O.C.G.A. § 1-3-3;

(2) Capture and reuse of cooling system condensate or storm water in compliance with applicable City of Commerce ordinances and state guidelines;

(3) Reuse of gray water in compliance with O.C.G.A. § 31-3-5.2 and applicable local board of health regulations;

(4) Use of reclaimed wastewater by a designated user from a system permitted by the Environmental Protection Division of the Georgia Department of Natural Resources to provide reclaimed waste water;

(5) Watering personal food gardens;

(6) Watering new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation;

(7) Drip irrigation or irrigation using soaker hoses;

(8) Hand watering with a hose with automatic cutoff or handheld container;

(9) Use of water withdrawn from private water wells or surface water by an owner or operator of property is such well or surface water is on said property;

(10) Watering horticultural crops held for sale, resale, or installation;

(11) Watering athletic fields, golf courses, or public turf grass recreational areas;

(12) Installation, maintenance, or calibration of irrigation systems; or

(13) Hydroseeding.

(b) No person shall use or allow the use of water in violation of the restrictions on outdoor water use contained in this section. Violations of this section shall be punishable in accordance with section 1-12 of this Code.

(Ord. No. 2010-016, 12-13-10)

Section 30-193—30-210. Reserved.

ARTICLE VII. DROUGHT CONTINGENCY PLAN[29]

Section 30-211. Drought conditions.

(a) *Drought indicators.*

(1) *Streamflow levels.* Streamflow levels do not apply in this project.

(2) *Groundwater levels.* Groundwater levels do not apply in this project.

(3) *Reservoir storage or levels.* Reservoir water surface levels will be monitoried to determine storage available for water supply, using a U.S.G.S. staff gauge or equivalent. A drought will defined as any decrease in available water supply such that the Grove Creek Reservoir's pool elevation is less than elevation 695.6 for 72 hours or more, based on a 4.2 MGD average daily withdrawal rate. This elevation is equal to the low water surface level for 1954 drought conditions under a 4.2 MGD average daily withdrawal rate. It is estimated that a pool level of 695.6 the reservoir water suupply allocation can only supply 30 additional days of water at a 4.2 MGD rate is drought conditions persist.

The city will phase drought restrictions based on a certain level drop in the reservoir pool elevation. At such time as the reservoir pool elevation drops one foot from elevation 697.6 (normal pool) to 696.6. for 72 hours, the city will implement Level One drought restrictions. When the pool elevation drops to 695.6 for 72 hours, the city will enact Level Two drought restrictions.

(4) *Drought restriction levels.*

a. *Level One:* Outdoor water use may occur only on scheduled days within the hours of 12:00 midnight to 10:00 a.m. The scheduled days for odd numbered addresses are Tuesdays, Thursdays and Sundays. The scheduled days for even numbered addresses and golf course fairways are Mondays, Wednesdays and Saturdays. The following uses are prohibited:

1. Using hydrants for any purpose other than fire fighting, public health, safety or flushing.

2. Washing hard surfaces such as streets, gutters, sidewalks and driveways, except when necessary for public health and safety.

b. *Level Two:* No outdoor water use is allowed other than for retail garden centers, producers of food and fiber and commercial car washes.

Violations of drought restriction levels shall be punished as provided in section 30-212.

(Ord. No. 98-9, § I, 11-23-98; Ord. No. 2007-11, 11-12-07)

Section 30-212. Priority use system.

(a) *Order of water use.* The city will operate its water system based on a customer priority use basis. This priority system is developed to ensure adequate water supply to users in order of need as follows:

(1) Hospitals, nursing homes and other convalescent care facilities.

[29]Editor's note(s)—Ord. No. 98-9, §§ I—IV, adopted Nov. 23, 1998, did not specifically amend the Code; hence inclusion as art. VII, §§ 30-211—30-214, was at the editor's discretion.

(2) Domestic personal uses including personal consumption, bathing, dish and clothes washing.

(3) Industrial uses.

(4) Commercial uses.

(5) Schools.

(6) Farm uses for acreage greater than ten acres including plant nurseries.

(7) Noncommercial uses including farms and plant nurseries not exceeding ten acres and outdoor domestic watering.

(8) Outdoor recreation.

(b) *When in effect.* The priority use system shall be placed in effect when either the normal pool drops from elevation 697.6 to 695.6 or when there is computed less than 75 percent available water remaining to meet the average annual daily withdrawal of the preceding 12 months.

(c) *When used during water shortages.* The city shall adopt the priority use system as outlined in II-A for use during periods of water shortages. Water shortages may be declared for reasons other than lack of supply.

(d) *Restrictions and enforcement.* During periods of drought (when the reservoir pool elevation in 695.6 or less) or other emergency water reduction restrictions on water use shall apply to the following priority uses:

(1) Industrial uses in which water is required for production of products shall be reduced by 50 percent of the average daily amount as computed by the past 12 months of usage.

(2) Commercial uses shall be restricted to cooking and sanitary needs only. Commercial car washes will be prohibited while priority use system is in effect.

(3) Noncommercial uses such as outdoor watering shall be prohibited.

(4) Outdoor water recreation activities shall be prohibited.

Enforcement procedures shall call for all city employees to report any observed, reported or suspected infraction to the city manager. The first violation shall be a verbal warning to cease restricted water use. Additional violations shall be accessed as follows:

Second violation—$100.00 surcharge;

Third violation—$200.00 surcharge;

Subsequent violations—$200.00 surcharge and lock meter box plus a $300.00 reconnection fee.

(e) *Emergency procedures and rationing.* The city manager shall be notified by the director of water and sewer operation in the event that the normal pool elevation drops to elevation 696.6. The city manager shall then obtain authorization from the city council to implement Level One drought restrictions. The city manager shall be notified by the director of water and sewer operations in the event that the normal pool elevation drops to elevation 695.6. The city manager shall then obtain autorization from the city council to implement Level Two drought restrictions and to put the priority use system into effect. In the event Level One or Level Two drought restrictions are implemented, the city manager shall also contact Banks County, Jackson County, the Jackson County Water and Sewer Authority and the City of Maysville. The following procedures shall aso be followed:

(1) Announcement over local radio, advertisement by local legal newspaper and printed messages sent with monthly water billings concerning drought restrictions.

(2) Area schools, hospitals and largest water customers shall be notified in writing.

(3) In the event of severe water shortage, such that rationing measures are required, steps (1) and (2) above shall be followed as outlined.

(4) Rationing or water supplies shall be directed by the city manager's office. Water for uses other than items described in subsection (a)(1) and (2) shall be prohibited.

(Ord. No. 98-9, § II, 11-23-98; Ord. No. 2007-11, 11-12-07)

Section 30-213. State mandated restrictions.

The city shall also implement and enforce any state mandated restrictions which are more restrictive than city mandated water restrictions in effect at the time that such state mandated water restrictions are declared.

(Ord. No. 98-9, § III, 11-23-98; Ord. No. 2007-11, 11-12-07)

Section 30-214. Enforcement.

Violations of the criteria set forth in this plan for protecting the water quality of the Grove Creek Reservoir shall be enforced by the city, assigns or duly authorized agents. All incidents of littering, water pollution, or any other act which threatens water quality, after the first warning, shall be punishable by the maximum fine of $1,000.00 allowed by law in the magistrate court pursuant to O.C.G.A. § 15-10-60 et seq. This is in addition to any other punishment provided by other local, state or federal law.

(Ord. No. 98-9, § IV, 11-23-98)

Section 30-215—20-230. Reserved.

ARTICLE VIII. STREAM BUFFER PROTECTION

Section 30-231. Title.

This article shall be known as the "City of Commerce Stream Buffer Protection Ordinance."

(Ord. No. 2004-028A, § 1, 12-13-2004)

Section 30-232. Findings and purposes.

(a) *Findings.* Whereas, the city 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.

(b) *Purposes.* It is the purpose of this article 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) Create buffer zones along the streams of the city for the protection of water resources; and,

(2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

(Ord. No. 2004-028A, § 2, 12-13-04)

Section 30-233. Definitions.

Buffer means, with respect to a stream, a natural or enhanced vegetated area (established by subsection 30-235(a) below), lying adjacent to the stream.

Impervious cover means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

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 activity means those actions or activities which comprise, facilitate or result in land development.

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

Land disturbance activity means those actions or activities which comprise, facilitate or result in land disturbance.

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.

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

Permit means the permit issued by the Natural Resource Conservation Service (NRCS) required for undertaking any land development activity

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.

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.

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

Setback means, with respect to a stream, the area established by subsection 30-235(a)(2) extending beyond any buffer applicable to the stream.

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 indicates the presence of a stream in a drainage area of other than 25 acres, the city 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.

(Ord. No. 2004-028A, § 3, 12-13-04)

Section 30-234. Applicability.

This article shall apply to all land development activity on property containing a stream protection area as defined in section 30-233. 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.

(1) *Grandfather provisions.* This article shall not apply to the following activities:

a. 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 article.

b. 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.

c. 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 article.

d. 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 article.

(2) *Exemptions.* The following specific activities are exempt from this article. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

a. 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.

b. 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 subsection a., above.

c. Land development activities within a right-of-way existing at the time this article takes effect or approved under the terms of this article.

d. Within an easement of any utility existing at the time this article takes effect or approved under the terms of this article, 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.

e. 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 chief building official on the next business day after commencement of the work. Within ten days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the chief building official 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.

f. 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 article, 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 subsection 30-235(b).

(Ord. No. 2004-028A, § 4, 12-13-04)

Section 30-235. Land development requirements.

(a) *Buffer and setback requirements.* All land development activity subject to this article shall meet the following requirements:

(1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.

(2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

(3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

(b) *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 article, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the chief

building official finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the planning commission of the city 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 planning commission of the city shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the planning commission. The city shall give public notice of each such public hearing in a newspaper of general circulation within the city. The city 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 article prevents land development unless a buffer variance is granted.

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

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

(3) 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. The exact area of the buffer to be affected shall be accurately and clearly indicated;

d. 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.

(4) 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.

(Ord. No. 2004-028A, § 5, 12-13-04)

Section 30-236. Compatibility with other buffer regulations and requirements.

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(Ord. No. 2004-028A, § 6, 12-13-04)

Section 30-237. Additional information requirements for development on buffer zone properties.

Any permit applications for property requiring buffers and setbacks hereunder must include the following:

(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 chief building official may reasonably deem necessary for review of the application and to insure that the buffer zone ordinance is addressed in the approval process.

All buffer and setback areas must be recorded on the final plat of the property following plan approval.

(Ord. No. 2004-028A, § 7, 12-13-04)

Section 30-238. Responsibility.

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the city, its officers or employees, for injury or damage to persons or property.

(Ord. No. 2004-028A, § 3, 12-13-04)

Section 30-239. Inspection.

The chief building official may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the chief building official in making such inspections. The city shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, and for this

purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent who requests entry for 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 official duties.

(Ord. No. 2004-028A, § 3, 12-13-04)

Section 30-240. Violations, enforcement and penalties.

Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

(1) *Notice of violation.* If the chief building official determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

a. The name and address of the owner or the applicant or the responsible person;

b. The address or other description of the site upon which the violation is occurring;

c. A statement specifying the nature of the violation;

d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this article and the date for the completion of such remedial action;

e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,

f. A statement that the determination of violation may be appealed to the chief building official by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).

(2) *Penalties.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the chief building official shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the chief building official may take any one or more of the following actions or impose any one or more of the following penalties.

a. *Stop work order.* The chief building official may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the

applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.

b. *Withhold certificate of occupancy.* The chief building official 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 violation or has otherwise cured the violations described therein.

c. *Suspension, revocation or modification of permit.* The chief building official may suspend, revoke or modify the permit authorizing the land development project. 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 violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the chief building official may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

d. *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the chief building official shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) after the chief building official has taken one or more of the actions described above, the chief building official may impose a penalty not to exceed $1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

e. *Criminal penalties.* For intentional and flagrant violations of this article, the chief building official may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed $1,000.00 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(Ord. No. 2004-028A, § 10, 12-13-04)

Section 30-241. Administrative appeal and judicial review.

(a) *Administrative appeal.* Any person aggrieved by a decision or order of chief building official, may appeal in writing within 30 days after the issuance of such decision or order to the city recorder and shall be entitled to a hearing before the planning commission within 30 days of receipt of the written appeal.

(b) *Judicial review.* Any person aggrieved by a decision or order of chief building official after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Jackson County.

(Ord. No. 2004-028A, § 11, 12-13-04)

Section 30-242—30-249. Reserved.

ARTICLE IX. WELLHEAD PROTECTION

Section 30-250. Short title and purpose.

(a) This article shall be known as the "Wellhead Protection Ordinance."

(b) The purpose of this article is to ensure the provision of a safe and sanitary drinking water supply for the City of Commerce by the establishment of wellhead protection zones surrounding the wellheads for all wells and springs which are the supply sources for the City of Commerce water system, and by the designation and regulation of property uses and conditions which may be maintained within such zones.

(Ord. No. 2024-0001, § I, 4-15-24)

Section 30-251. Definitions.

When used in this article the following words and phrases shall have the meaning given in this section:

Hazardous waste or material means any waste or material which because of its quantity, concentrated or physical, chemical, or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitation reversible illness; or

(2) Pose a substantial present or potential hazard to human health or to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Sanitary landfills means a disposal site where solid wastes, including putrescible wastes, or hazardous wastes, are disposed of on land by placing earth cover thereon.

Wellhead means the upper terminal of a well or spring, including adapters, ports, seals, valves, and other attachments.

(Ord. No. 2024-0001, § I, 4-15-24)

Section 30-252. Establishment of a wellhead protection zone.

There is hereby established a use district to be known as a wellhead protection zone, identified and described as all the area within a zone, within which is the center of any municipal water supply wellhead. In a situation where the wellhead protection zone extends into the jurisdiction of another government entity, the City of Commerce will request that government to respect the protective features of this article. The area will consist of two zones identified as follows:

(a) *The control zone:* Within this zone, City of Commerce shall control all activities so that there are minimal sources of potential pollution in the immediate vicinity of the wellhead. The control zone is all that area within a circle the center of said wellhead and the radius of which is 25 feet.

(b) *The management zone:* Within this zone, certain potential pollution sources are prohibited and certain activities must be performed in accordance with the State of Georgia "Rules for Safe Drinking Water, Section 391-3-5.40 Wellhead Protection". The management zone may include inner- and outer-management zones, and contains the control zone and the wellhead as identified in the approved Georgia Wellhead Protection Plan for the City of Commerce.

(Ord. No. 2024-0001, § I, 4-15-24)

Section 30-253. Prohibited uses.

The following uses or conditions shall be and are hereby prohibited within wellhead protection zones, whether or not such use or condition may otherwise be ordinarily included as a part of a use permitted under this chapter:

(a) Any new septic tanks or drain fields appurtenant thereto may not be less than 100 feet from the wellhead;

(b) Sanitary landfills;

(c) Hazardous waste disposal sites;

(d) Any new storm water infiltration basins within 500 feet of the wellhead;

(e) Any new underground storage tanks within 500 feet of the wellhead;

(f) Any new sanitary sewer lines within the control zone of a wellhead.

(Ord. No. 2024-0001, § I, 4-15-24)

Section 30-254. Administration.

The policies and procedures for administration of any wellhead protection zone established under this article, including without limitation those applicable to non-conforming uses, exceptions, enforcement, and penalties, shall be the same as provided in the existing Unified Development Code ordinance for the City of Commerce, as the same is presently enacted or may from time to time be amended.

(Ord. No. 2024-0001, § I, 4-15-24)

Chapter 34 FIRE PREVENTION AND PROTECTION[30]

ARTICLE I. IN GENERAL

Section 34-1. Adoption of state rules, regulations.

For the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion and as mandated by O.C.G.A. § 25-2-12, the rules and regulations promulgated by the state safety fire commissioner is hereby adopted by reference by the city council and shall be applicable within the city limits.

(Code 1987, § 6-101)

Section 34-2. Local fire marshal—Designated.

The chief of the fire department shall serve as local fire marshal and in such capacity shall act on behalf of the state fire marshal in the enforcement of the state safety fire law, as amended, and all rules and regulations of the state safety fire commissioner at the local level. The local fire marshal shall carry out all of the provisions of the state safety fire law, as amended, which may come within his province, and shall perform those duties prescribed by the rules and regulations of the state safety fire commissioner.

(Code 1987, § 6-102)

Section 34-3. Same—Oath.

The local fire marshal shall, before entering upon the performance of his duties, take and subscribe the oath prescribed by section 2-1.

(Code 1987, § 6-103)

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[30]Cross reference(s)—Buildings and building regulations, ch. 14; businesses, ch. 18; environment, ch. 30; streets, sidewalks and other public places, ch. 62.

State law reference(s)—Authority to provide police and fire protection, Ga. Const., art. 9, Section 2, par. 3(1); statewide application of Standard Fire Prevention Code, O.C.G.A. § 8-2-25; The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings, O.C.G.A. § 8-2-200; providing of fire escapes by building owners, O.C.G.A. § 8-2-50; obstruction or hindering of firefighters, O.C.G.A. § 16-10-24.1; regulation of fire and other hazards to persons and property generally, O.C.G.A. § 25-2-1 et seq.; local fire departments generally, O.C.G.A. § 25-3-2 et seq.; authority to enact ordinances or fire and life safety codes, O.C.G.A. § 25-3-4; firefighter standards and training, O.C.G.A. § 25-4-2 et seq.; mutual aid resource pacts, O.C.G.A. § 25-6-1; Georgia Fire Academy Act, O.C.G.A. § 25-7-1 et seq.; regulation of fireworks, O.C.G.A. § 25-10-1 et seq.; electronic security systems installed and serviced by counties or municipal corporations, O.C.G.A. § 36-60-12.

Section 34-4. Persons permitted on fire equipment.

No person, other than members of the fire department, shall be permitted to ride upon the fire trucks when going to or returning from fires. At all other times, permission from the fire chief shall be required before allowing any person, other than members of the fire department, to ride upon the fire trucks.

(Code 1987, § 3-404(7))

Section 34-5. Persons permitted within vicinity of fire.

No persons other than firefighters, city officials, police officers, and the property owner or his agent shall be permitted within the immediate vicinity of a fire, unless the fire chief gives permission to do so. Operators of motor vehicles of any kind, other than members of the fire department, shall not enter the city block where the fire department is fighting a fire. Operators of motor vehicles shall not in any way restrict traffic on any street leading to such city block.

(Code 1987, § 3-404(10))

State law reference(s)—Refusal to obey official request at fire or other emergency, O.C.G.A. § 16-10-30; willful failure or refusal to comply with order by police officer or firefighter regulating traffic, O.C.G.A. § 40-6-2.

Section 34-6. Bonfires.

It shall be unlawful for any person or group, during a holiday or at any other time, to build a bonfire of any description within the city limits, except at places approved and designated by the chief of the fire department.

(Code 1987, § 17-106)

Section 34-7. Fireworks permits.

Any applicant for an application to conduct public exhibition or display of fireworks and/or fireworks or pyrotechnics exhibition or display of fireworks before a proximate audience as required by O.C.G.A § 25-10-1 et seq. shall pay a permit fee in an amount established from time to time by the City of Commerce Fire Chief, but not less than $10.00.

(Ord. No. 2025-002, § 1, 6-16-25)

Section 34-8—34-20. Reserved.

ARTICLE II. FALSE ALARMS AND ALARM SYSTEMS

Section 34-21. Purpose.

The purpose of this article is to regulate the responsibilities of those persons who purchase, rent, or use alarm systems, devices, or services. This article is also intended to encourage the improvement in reliability of these systems, devices, and services and to ensure that police and fire department personnel will not be unduly diverted from responding to actual emergencies as a result of responding to false alarms.

(Ord. No. 2015-006, 2-16-15)

Section 34-22. Definitions.

For the purposes of this article, the following words and phrases shall have the respective meanings:

Alarm shall mean and include any fire, robbery, burglary, holdup, medical, or panic alarm that transmits any signal (audible, visual, or silent) to the city, indicating a predetermined emergency condition exists whether the alarm is received:

(1) By telephone line to a designated position on an alarm panel;

(2) By a private alarm service company and relayed to the city;

(3) By an automated telephone alarm system playing a recorded message when received by the city; or

(4) By a signal relayed to the city by a third party.

Alarm contractor shall mean any person who installs, maintains, repairs, alters, monitors or services alarm systems for compensation.

Alarm signal shall mean the audible sound or a transmission of a signal or a message as the result of the activation of an alarm system or an audible alarm.

Alarm system shall mean any mechanical or electrical or radio-controlled device which is designed to be used for the detection of smoke or fire or of any unauthorized entry into a building, structure or facility, or for alerting others of the commission of an unlawful act within a building, structure or facility, or both, which emits a sound or transmits a signal or message when activated. Alarm systems include audible, silent, fire and panic alarms and proprietor alarms.

Audible alarm shall mean a device designed for the detection of fire or smoke or of unauthorized entry on premises which generates an audible sound when it is activated.

False alarm shall mean the activation of an alarm system to which the city responds and the investigating police officer or firefighter determines that none of the emergencies for which the alarm system has been installed have in fact occurred.

Person shall mean any individual, association, partnership, firm or corporation, or any combination of one or more of them, and includes any officer, employee, department, agency or instrumentality of the state.

(Ord. No. 2015-006, 2-16-15)

Section 34-23. General rules.

The following rules shall govern the use of alarm systems within the city:

(1) No person shall make, cause to be made or suffer to be made any false alarm from any location in the city.

(2) No person shall allow, sound or permit the sounding of any burglar or fire alarm or any motor vehicle burglar alarm in the city, which is audible outside the building or vehicle it is installed in unless such alarm is automatically terminated within 15 minutes of activation.

(3) No company or individual shall connect or cause to be connected, by any means whatsoever any alarm system or alarm that transmits directly into the Jackson County 911 Center or to any telephone line located at Commerce Fire Department or Commerce Police Department, provided, however, it shall not be a violation of the article for an alarm system to be connected or to transmit directly to any phone number maintained by the Jackson County 911 Center for such purpose.

(4) No individual or company shall test or cause to be tested any alarm system in the city without at least 30 minutes prior notification of the test to the Jackson County 911 Communications Center. Failure to make such prior notifications will be subject to a $100.00 fine for each occurrence.

(5) A false alarm shall not be deemed to have occurred when the responding agency is notified that no response is necessary before any act of response is substantially completed.

(6) Any person charged with a violation of the false alarm ordinance may offer proof at any hearing relating to such violation that the false alarm in question was caused by:

a. A lightning strike or other act of God;

b. The act of some third party whom the person could not control; or

c. Failure of an alarm contractor to repair the alarm system which made the false alarm after being employed by the person to make such repair; provided however, the person has again made a good faith attempt to have the alarm system repaired after the false alarm which is the subject of the charge.

(Ord. No. 2015-006, 2-16-15)

Section 34-24. Response fees for false alarms.

It shall be unlawful for any person to give or cause to be given or aid or abet in the giving of any false alarm of fire with intent to deceive the department, or to pull the hook of any call station or call box with such intent. The city shall maintain the right to impose fines and fees associated with false alarms causing a fire department emergency response.

The following penalties will be assessed for each violation during any calendar year:

(1) First and second false alarms: Written warning.

(2) Third false alarm: $50.00.

(3) Forth false alarm: $100.00.

(4) Fifth and later false alarms: $150.00.

Written warnings for first and second false alarms shall be hand delivered to the location of the false alarm by the fire marshal or his/her designee. Failure to make, deliver, or receive any warning shall not affect any subsequent enforcement efforts or the penalty for any subsequent false alarm. The fire marshal or his/her designee shall be given the power to issue warnings related to false alarms at their discretion upon each violation. All false alarm fees received under this ordinance shall be utilized by the city for reimbursing response expenses. A new alarm system shall be allowed a 30-day grace period from the date of installation before the penalty of this section shall apply.

(Ord. No. 2015-006, 2-16-15)

State law reference(s)—Transmitting false report of fire, O.C.G.A. § 16-10-27.

Section 34-25. Payment of fees.

Payment of false alarm fees as documented by the city public safety department and billed to a business is a condition of that business operating within the city. The city clerk is authorized, pursuant to City Code section 18-29, to withhold issuing or renewing an occupational tax certificate to a business, which has failed to pay a false alarm service fee. Any business, which operates, or continues to operate within the city when its occupational tax certificate has been withheld under this provision, shall be deemed to be operating without an occupational tax

certificate and shall be subject to the penalty resulting therefrom. In the case of residences, the false alarm fee shall be billed on the utility bill issued by the city monthly. Failure to pay such fee shall result in the discontinuance of utility service.

(Ord. No. 2015-006, 2-16-15)

Chapter 38 FLOODS[31]

ARTICLE I. IN GENERAL

Section 38-1—38-25. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION[32]

DIVISION 1. GENERALLY

Section 38-26. Short title.

This article shall be known and may be cited as the Flood Damage Prevention Ordinance of the City of Commerce.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-27. Findings.

The flood hazard areas in the City of Commerce, Georgia, are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-28. Purposes.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

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[31]Cross reference(s)—Buildings and building regulations, ch. 14; businesses, ch. 18; environment, ch. 30; solid waste, ch. 58; streets, sidewalks and other public places, ch. 62; utilities, ch. 78.

State law reference(s)—Responsibility of local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizens, O.C.G.A. § 36-35-1.

[32]Editor's note(s)—Ord. No. 2010-009, § 1, adopted June 14, 2010, repealed Art. II and enacted a new Art. II to read as set out herein. Former Art. II, §§ 38-26—38-62, pertained to similar subject matter and derived from Ord. No. 92-14, arts. 1, 3—5, adopted Sept. 14, 1992.

(1) Require that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;

(2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;

(3) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(4) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and

(5) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-29. Objectives.

The objectives of this article are to:

(1) Protect human life and health;

(2) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(3) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize flood blight areas;

(4) Minimize expenditure of public money for costly flood control projects;

(5) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(6) Minimize prolonged business interruptions; and

(7) Insure that potential homebuyers are notified that property is in a flood area.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-30. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory structure: A structure having minimal value and used for parking, storage and other nonhabitable uses, such as garages, carports, storage sheds, pole barns, hay sheds and the like.

Addition (to an existing building): Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by an independent perimeter loadbearing wall, shall be considered "new construction."

Administrator: The director of the department of planning and development for the city, or designee.

Appeal: A request for a review of the administrator's interpretation of any provision of this article.

Area of shallow flooding: A designated AO or AH zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, areas of special flood hazard shall be those designated by the local community and referenced in this article.

Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE): The elevation shown on the flood insurance rate map for zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Basement: That portion of a building having its floor subgrade (below ground level) on all sides.

Building: See "Structure"

Critical facility: Any public or private facility, which, if flooded, would create an added dimension to the disaster or would increase the hazard to life and health. Critical facilities include:

(1) Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials;

(2) Hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(3) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(4) Generating plants, and other principal points of utility lines.

Development: Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, and storage of materials or equipment.

Elevated building: A nonbasement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

Existing construction: For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced before August 13, 2001.

(Amended 03-16-2020)

Existing manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) was completed before August 13, 2001 (adoption of the first flood management ordinance in the City of Commerce).

Expansion to an existing manufactured home park or subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Flood or *flooding:* A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM): An official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been defined as zone A.

Flood insurance rate map (FIRM): An official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood insurance study: The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles and water surface elevations of the base flood.

Floodplain: Any land area susceptible to flooding.

Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Highest adjacent grade: The highest natural elevation of the ground surface, prior to construction, adjacent to the proposed foundation of a building.

Historic structure: Any structure that is: listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the Secretary of the Interior, or (b) directly by the Secretary of the Interior in states without approved programs.

Lowest floor: The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of the Commerce City Code.

Manufactured home: A building, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level: The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

National geodetic Vertical Datum (NGVD): As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction: For floodplain management purposes, “new construction” means structure for which the “start construction” commenced on or after August 13, 2001, in the City of Commerce and includes any subsequent improvements to such structures.

(Amended 03-16-2020)

New manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed after August 13, 2001, in the City of Commerce.

North American Vertical Datum (NAVD): A vertical control which has replaced the National Geodetic Vertical Datum of 1929 in existing and future FEMA Flood Modernization Maps.

Recreational vehicle: A vehicle, which is: built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction: The date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (NOTE: accessory structures are not exempt from any ordinance requirements) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank.

Subdivision: The division of a single lot into two or more lots for the purpose of sale or development.

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during a five-year period, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the "start of construction" of the improvement. Note: The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures, which have incurred "substantial damage", regardless of the actual amount of repair work performed.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include (1) those improvements of a structure required to comply with existing violations of state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions and which have been identified by the administrator, and not solely triggered by an improvement or repair project, or (2) any alteration of a "historic

structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Substantially improved existing manufactured home parks or subdivisions: Where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance: A grant of relief from the requirements of this article, which permits construction in a manner otherwise prohibited by this article.

Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, or other certifications, or other evidence of compliance required by this article is presumed to be in violation until such time as that documentation is provided.

(Ord. No. 2010-009, § 1, 6-14-10; Ord. No. 2010-012, §§ I—IV, 7-19-10)

Section 30-31. Applicability.

This article shall apply to all areas of special flood hazard within the jurisdiction of City of Commerce, Georgia.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 3-32. Basis for area of special flood hazard.

(a) The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in its

(a) Flood Insurance Study (FIS) for Jackson County, Georgia, dated December 17, 2010, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this ordinance.

(b) Additional areas of special flood hazard. Areas of special flood hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS.

(c) Repository. The repository for public inspection of the flood insurance study (FIS), accompanying maps and other supporting data is the City of Commerce Planning and Development Department, located at Cedar Drive, Commerce, Georgia, or at such future location as may be designated by the city council.

(Ord. No. 2010-009, § 1, 6-14-10; Ord. No. 2010-012, §§ V, VI, 7-19-10)

(Amended 03-16-2020)

Section 38-33—38-40. Reserved.

DIVISION 2. PERMITS

Section 38-41. Permit required.

No development activity shall commence within an area regulated by this article until and unless a development permit or building permit, or both if required, shall have been approved by the administrator. No development activity shall be approved unless it conforms with the provisions of this article prior to the commencement of any development activities. No building or structure shall be constructed within an area regulated by this article until and unless a development permit or building permit, or both if required shall have been approved by the administrator. No building or structure shall be approved unless it conforms with the provisions of this article prior to the construction of said building or structure.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-42. Permit procedures.

Application for a development permit shall be made to the administrator on forms furnished by the administrator prior to any development activities, and may include, but not be limited to the following: plans in sufficient number as specified by the administrator, drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-43. Specific information required—Application stage.

The following information is required at the application stage:

(1) Elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all proposed structures;

(2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;

(3) Design certification from a registered professional engineer or architect that any proposed nonresidential floodproofed structure will meet the floodproofing criteria of this article; and

(4) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-44. Specific information required—Construction stage.

The following information is required at the construction stage:

(1) For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the regulatory floor elevation or floodproofing level immediately after the lowest floor or floodproofing is completed. Any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for nonresidential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

(2) Any work undertaken prior to submission of these certifications shall be at the permit holder's risk. The administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby, shall be cause to issue a stop work order for the project.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-45—38-50. Reserved.

DIVISION 3. FLOOD HAZARD REDUCTION

Section 38-51. General standards.

In all areas of special flood hazard the following provisions are required:

(1) *Anchoring.* New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) *Flood-resistant materials.* New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.

(3) *Construction methods and practices.*New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.

(4) *Heating and air conditioning.* All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(5) *Manufactured homes.* Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(6) *Water supply.* New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(7) *Sewage systems.* New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(8) *On-site sewage disposal systems.* On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) *Nonconformities.* Any alteration, repair, reconstruction or improvement to a structure, which is not compliant with the provisions of this article, shall be undertaken only if the nonconformity is not furthered, extended or replaced.

(10) *Additional requirements.* In addition to the requirements of this article, compliance with all requirements of 44 CFR 60.3(b) is required and all requirements of 44 CFR 60.3(b) are incorporated herein by reference thereto.

(Ord. No. 2010-009, § 1, 6-14-10; Ord. No. 2010-012, § VII, 7-19-10)

Section 38-52. Elevated buildings.

In all areas of special flood hazard, all new construction or substantial improvements of existing structures that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.

Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(2) The bottom of all openings shall be no higher than one foot above grade; and

(3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions.

So as not to violate the "lowest floor" criteria of this article, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and

The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-53. New construction and/or substantial improvements.

In all areas of special flood hazard the following provisions are required for new construction and/or substantial improvements.

Where base flood elevation data are available, new construction and/or substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than two feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with standards of this article for "elevated buildings."

All heating and air conditioning equipment and components (including ductwork), all electrical, ventilation, plumbing, and other service facilities shall be elevated at or above two feet above the base flood elevation.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-54. Nonresidential construction.

New construction and/or the substantial improvement of any structure located in A1-30, AE, or AH zones, may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to two feet above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in this article

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-55. Manufactured homes.

Where base flood elevation data are available:

(1) All manufactured homes placed and/or substantially improved on: (1) individual lots or parcels, (2) in new and/or substantially improved manufactured home parks or subdivisions, (3) in expansions to existing manufactured home parks or subdivisions, or (4) on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood, must have the lowest floor including basement, elevated no lower than two feet above the base flood elevation.

(2) Manufactured homes placed and/or substantially improved in an existing manufactured home park or subdivision may be elevated so that either: the lowest floor of the manufactured home is elevated no lower than two feet above the level of the base flood elevation; or the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.

(3) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-56. Recreational vehicles.

All recreational vehicles placed on sites must either:

(1) Be on the site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use, (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or

(3) The recreational vehicle must meet all the requirements for "new construction," including the anchoring and elevation requirements of this article.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-57. Floodway.

Located within areas of special flood hazard established in this article, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

(1) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof.

(2) Only if the provision of this subsection above is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of this article.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-58. Building standards for streams without established base flood elevations and/or floodway (A-zones).

Located within the areas of special flood hazard established in this article, where streams exist but no base flood data have been provided (A-zones), or where base flood data have been provided but a floodway has not been delineated. When base flood elevation data or floodway data have not been provided in accordance with this article, then the administrator shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of this article.

Only if data are not available from these sources, then the following provisions shall apply:

(1) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or 20 feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(Ord. No. 2010-009, § 1, 6-14-10)

(Amended 03-16-2020)

Section 38-59. Standards for areas of special flood hazard (zones AE) with established base flood elevations without designated floodways.

Located within the areas of special flood hazard established in this article, where streams with base flood elevations are provided but no floodways have been designated, (zones AE) the following provisions apply:

(1) No encroachments, including fill material, new structures or substantial improvements shall be located within an area equal to the width of the stream or twenty (20) feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(3) No encroachments, including fill material, new structures or substantial improvements shall be located within the remaining Area of Special Flood Hazard beyond the limits of the area given in 38-59(1) unless certification by a registered professional engineer is provided demonstrating that

such encroachment, when combined with all other existing and anticipated development, shall not result in more than a one (1) foot increase in flood levels during the occurrence of the base flood discharge.

(Ord. No. 2010-009, § 1, 6-14-10)

(Amended 03-16-2020)

Section 38-60. Standards for areas of shallow flooding (AO zones).

Areas of special flood hazard established in this article may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet above ground, with no clearly defined channel. The following provisions apply:

(1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map (FIRM), above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least three feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of this article for "elevated buildings." The administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(2) New construction or the substantial improvement of a nonresidential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to the specified FIRM flood level plus two feet, above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in this article.

(3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-61. Subdivisions.

(a) All subdivision and/or development proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision and/or development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision and/or development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) For subdivisions and/or developments greater than 50 lots or five acres, whichever is less, base flood elevation data shall be provided for subdivision and all other proposed development, including manufactured home parks and subdivisions. Any changes or revisions to the flood data adopted herein and shown on the FIRM shall be submitted to FEMA for review as a conditional letter of map revision (CLOMR) or conditional letter of map amendment (CLOMA), whichever is applicable. Upon completion of the project, the developer is responsible for submitting the "as-built" data to FEMA in order to obtain the final LOMR.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-62. Standards for critical facilities.

Critical facilities shall not be located in the 100-year floodplain or the 500-year floodplain. All ingress and egress from any critical facility must be protected to the 500-year flood elevation or two feet above the base flood elevation, whichever higher.

(Ord. No. 2010-009, § 1, 6-14-10)

(Amended 03-16-2020)

Section 38-63—38-80. Reserved.

DIVISION 4. VARIANCES

Section 38-81. Variance procedures.

The Commerce City Council, after recommendation from the planning commission, shall hear and decide requests for appeals or variance from the requirements of this article.

The Commerce City Council shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the zoning administrator, in the enforcement or administration of this article.

Any person aggrieved by the decision of the Commerce City Council with jurisdiction may appeal such decision to the Superior Court of Jackson County, as provided in O.C.G.A. § 5-4-1 et seq.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-82. Criteria and conditions for variances.

The provisions of this article are minimum standards for flood loss reduction; therefore any deviation from the standards must be weighed carefully. In reviewing requests for variances, the Commerce City Council shall consider all technical evaluations, relevant factors, and the following standards in addition to others in this article. A variance shall be issued only when consistent with the following criteria and conditions:

(1) A finding of good and sufficient cause is made.

(2) A determination is made that failure to grant the variance would result in exceptional hardship.

(3) A determination is made that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(6) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the

structure. In the instance of a historic structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(7) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this article are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-83. Conditional approval permitted.

Upon consideration of the factors listed above and the purposes of this article, the Commerce City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-84. Actions following variance approval.

Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.

The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-85—38-90. Reserved.

DIVISION 5. ADMINISTRATION

Section 38-91. Designation of administrator.

The director of planning and development of the City of Commerce is hereby appointed to administer and implement the provisions of this article.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-92. Duties and responsibilities of the administrator.

Duties of the administrator shall include, but shall not be limited to:

(1) Review proposed development to assure that the permit requirements of this article have been satisfied.

(2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by federal or state law, including Section 404

of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Require that copies of such permits be provided and maintained on file.

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding.

(4) When base flood elevation data or floodway data have not been provided in accordance with this article, then the administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources in order to administer the provisions of this article.

(5) Review and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all new or substantially improved structures in accordance with this article.

(6) Review and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been floodproofed, in accordance with this article.

(7) When floodproofing is utilized for a structure, the administrator shall obtain certification of design criteria from a registered professional engineer or architect in accordance with this article.

(8) Make substantial damage determinations following a flood event or any other event that causes damage to structures in flood hazard areas.

(9) Notify adjacent communities and the Georgia Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(10) For any altered or relocated watercourse, submit engineering data/analysis within six months to the FEMA to ensure accuracy of community flood maps through the letter of map revision process. Assure flood-carrying capacity of any altered or relocated watercourse is maintained.

(11) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(12) All records pertaining to the provisions of this article shall be maintained in the office of the administrator and shall be open for public inspection.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-93. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-94. Interpretation.

In the interpretation and application of this article all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the city; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-95. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City of Commerce, or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-96. Penalties for violation.

Failure to comply with the provisions of this article or with any of its requirements, including conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a violation. Any person who violates this article or fails to comply with any of its requirements shall be subject to applicable penalty and enforcement provisions of section 1-12 of Commerce City Code. Nothing herein contained shall prevent the City of Commerce from taking such other lawful actions as is necessary to prevent or remedy any violation.

(Ord. No. 2010-009, § 1, 6-14-10)

Section 38-97. Severability.

If any section, clause, sentence, or phrase of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this article or ordinance."

(Ord. No. 2010-009, § 1, 6-14-1

Chapter 42 MUNICIPAL COURT[33]

Section 42-1. Convening of municipal court.

The chief municipal court judge shall designate the date, time and the location for court to be held.

(Code 1987, § 5-102; Ord. No. 2020-009, § I, 5-18-20)

Section 42-2. Compensation.

The mayor and council shall determine the compensation to be paid the judge of the municipal court.

[33]Editor's note(s)—Following is a partial list of citations to the Official Code of Georgia Annotated which extend jurisdiction of municipal courts or otherwise allow for enactment of local laws notwithstanding the limitations on special legislation as set forth in art. 3, Section 4, par. 4 of the Georgia Constitution and the limitations on home rule powers as provided in O.C.G.A. § 36-35-6(a)(2)(A):

O.C.G.A. §	Subject
36-32-6	Possession of one ounce or less of marijuana.
36-32-7	Operating motor vehicle without effective insurance.
36-32-8	Operating motor vehicle without certificate of emission inspection.
36-32-9	Shoplifting of $100.00 or less.
36-32-10	Furnishing alcoholic beverages to and purchase and possession by persons under 21 years of age.
16-12-120	Certain acts in public transit buses.
16-12-2	Smoking in public places.
16-11-41	Public drunkenness; disorderly conduct.
16-11-36, 16-6-24	Loitering or prowling; procuring others to engage in sexual acts for hire.
16-11-34	Preventing or disrupting lawful meetings, gatherings or processions.
16-7-48	Litter control.
16-7-25	Damaging, injuring or interfering with property of public utility companies, municipalities or political subdivisions.
40-6-252	Parking, standing or driving vehicle in private parking area after request not to do so.
40-6-371	Powers of local authorities with respect to motor vehicles and traffic.
40-13-21	General powers and jurisdiction of probate and municipal courts with respect to traffic offenses.
40-2-8	Operation of unregistered vehicle or vehicle without current license plate, etc. See O.C.G.A. § 40-13-22.

Charter reference(s)—Municipal court, § 4.10 et seq.

Cross reference(s)—Administration, ch. 2; businesses, ch. 18; traffic and vehicles, ch. 74; vehicles for hire, ch. 82.

State law reference(s)—Establishment and jurisdiction of municipal courts, Ga. Const. art. 6, Section 1, par. 1; municipal courts, O.C.G.A. § 36-32-1 et seq.

(Code 1987, § 5-103)

Section 42-3. Creation of part-time prosecuting attorney's office.

There is hereby created the office of part-time prosecuting attorney for the City of Commerce Municipal Court. The city council shall appoint such prosecuting attorneys on an as-needed basis and said attorneys shall serve at the pleasure of the city council. Such attorneys shall have the authority and duty to represent the city as more fully set out in O.C.G.A. § 15-18-96. Said attorney shall serve terms of two years commencing and ending with the first meeting of the mayor and council held in January in even-numbered years.

(Ord. No. 2012-009, 7-9-12; Ord. No. 2020-009, § II, 5-18-20)

Section 42-4. Qualifications.

Attorneys appointed as prosecuting attorneys for the municipal court shall be a member in good standing of the State Bar of Georgia and shall be admitted to practice before the appellate courts of this state. The prosecuting attorney may engage in the private practice of law, but shall not practice in the Commerce municipal court or appear in any matter in which the prosecuting attorney has exercised jurisdiction. At any time in which a substitute prosecuting attorney is not available or an appointment has not been made, the city attorney may serve as the substitute prosecuting attorney until such time as a prosecuting attorney or substitute prosecuting attorney is available or appointed.

(Ord. No. 2012-009, 7-9-12)

Section 42-5. Compensation.

The prosecuting attorney shall be compensated as determined from time to time by the city council. The city council must approve of any employment of assistant prosecuting attorneys, employees or independent contractors by the prosecuting attorney.

(Ord. No. 2012-009, 7-9-12)

Section 42-6. Oath.

The prosecuting attorney shall swear to the following oath:

I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as prosecuting attorney of the City of Commerce.

(Ord. No. 2012-009, 7-9-12)

Section 42-7. Notification.

The city clerk shall forward a copy of the ordinance from which sections 42-4 through 42-7 derive to the Prosecuting Attorney's Council of the State of Georgia. The clerk of the municipal court shall notify the prosecuting attorney's council of the State of Georgia of the name of any person appointed to be the prosecuting attorney within 30 days of appointment.

(Ord. No. 2012-009, 7-9-12)

Section 42-8. Creation of part-time public defender's office.

There is hereby created the office of part-time public defender for the City of Commerce Municipal Court. The city council shall appoint such public defender and said attorney shall serve at the pleasure of the city council. Said attorney shall serve terms of two years commencing and ending with the first meeting of the mayor and council held in January in even-numbered years.

(Ord. No. 2020-009, § III, 5-18-20)

Section 42-9. Qualifications.

Attorneys appointed as public defender for the municipal court shall be a member in good standing of the State Bar of Georgia. The public defender may engage in the private practice of law, but shall not practice privately in the commerce municipal court or appear in any matter in which the public defender has exercised jurisdiction.

(Ord. No. 2020-009, § III, 5-18-20)

Section 42-10. Compensation.

The public defender shall be compensated as determined from time to time by the city council. The city council must approve of any employment of assistant public defender, employees or independent contractors by the public defender attorney.

(Ord. No. 2020-009, § III, 5-18-20)

Section 42-11. Oath.

The public defender attorney shall swear to the following oath:

"I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as public defender of the City of Commerce Municipal Court."

(Ord. No. 2020-009, § III, 5-18-20)

Section 42-12. Judge emeritus.

The city council may from time to time appoint a judge emeritus of the municipal court. The judge emeritus before assuming office, shall take an oath as required by section 4.11 of the City Charter. Once appointed the judge emeritus shall remain in office until his resignation, incapacity or death, provided however that he shall maintain all annual training requirements for Georgia Municipal Court Judges and the city shall pay the cost of such training requirements.

The judge emeritus may choose to serve as the judge of the Municipal Court in the absence of the chief judge, and at the direction of the chief judge, and when so directed shall have all powers and authority of the chief judge when so serving. The judge emeritus shall be compensated in the same manner as the chief judge while serving in the absence of the chief judge.

The judge emeritus shall have the authority to administer oaths of office to the mayor and council members. The judge emeritus shall have the authority to administer oaths of office to other appointed city officials and employees at the request of the mayor. The judge emeritus may serve in other ceremonial duties as requested by the mayor. For administering oaths and other ceremonial duties the judge emeritus shall receive a $100.00 per diem compensation.

(Ord. No. 2025-003, 7-21-25

Chapter 46 OFFENSES AND MISCELLANEOUS PROVISIONS[34]

ARTICLE I. IN GENERAL

Section 46-1. Disorderly conduct.

Any person who shall do or engage in any of the following in the unincorporated area of the city shall be guilty of disorderly conduct:

(1) Any person who shall act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health.

(2) Any person who shall act in a violent or tumultuous manner toward another, whereby public property or property of any other person is placed in danger of being destroyed or damaged.

(3) Any person who shall endanger lawful pursuits of another by acts of violence or threats of bodily harm.

(4) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another or public property.

(5) Any person who shall assemble or congregate with another or others and cause, provoke or engage in any fight or brawl.

(6) Any person who shall collect in bodies or in crowds and engage in unlawful activities.

(7) Any person who shall assemble or congregate with another or others and engage or attempt to engage in gaming.

(8) Any person who shall frequent public place and obtain money for another by an illegal and fraudulent scheme, trick, artifice or device, or attempt to do so.

(9) Any person who assembles with another or others and engages in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person, or attempts to do so.

(10) Any person who utters, in a public place or any place open to the public, any obscene words or epithets.

(11) Any person who frequents any place where gaming or the illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs is practiced, allowed or tolerated.

(12) Any person who shall use fighting words directed towards any person who becomes outraged and thus creates turmoil.

(13) Any person who shall assemble or congregate with another or others and do bodily harm to another.

(14) Any person who shall, by acts of violence, interfere with another's pursuit of a lawful occupation.

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[34]Cross reference(s)—Alcoholic beverages, ch. 6; animals, ch. 10; buildings and building regulations, ch. 14; businesses, ch. 18; environment, ch. 30; streets, sidewalks and public places, ch. 62; traffic and vehicles, ch. 74; utilities, ch. 78; vehicles for hire, ch. 82.

State law reference(s)—Limitations on home rule powers of municipal corporations, O.C.G.A. § 36-35-6(a)(2); Criminal Code of Georgia, O.C.G.A. § 16-1-1 et seq.

(15) Any person who shall congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by a peace officer or other person having authority.

(16) Any person who damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy, or physical offensive condition.

(Code 1987, § 17-101)

Section 46-2. Discharge of firearms, air guns, etc.

(a) *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:

Firearms includes pistols, rifles, and shotguns, whether operated by the discharge of an explosive powder, air or gas.

(b) *Act prohibited.* No person shall discharge any firearm within the city except:

(1) Law enforcement officers of the city, county, state or federal agencies who are engaged in the line of duty.

(2) Competitors in organized shooting events held at ranges which have been registered and approved by the city pursuant to rules promulgated by the chief of police.

(3) Licensed hunters of game birds, during state and/or federal seasons are authorized to discharge shotguns only loaded with shells which contain bird shot no larger in diameter than number six shot; provided that no such gun shall be discharged within 150 yards of a public road or a residence or from any point from which expended shot may reach or fall upon either a residence or a vehicle traveling a public road.

(c) *Special permits for shooting animal pests.* The chief of police may issue a special written permit to a citizen over the age of 18 to use a firearm for the limited purpose of shooting animal pests. Any firearm and/or ammunition used under this section and the type of animal to be shot shall be first approved by the chief of police or designee. The permit shall be for a limited time not to exceed one year and for use only upon the applicant's property. The permit may be revoked with or without cause by the chief of police at any time without notice. No person holding such permit shall at any time discharge such firearm in such a way as to encroach on any street, public way, house or property or person of another. The application for such permit shall be signed by the applicant and give his correct name, age and address, the use intended and the period and place desired for such purposed use as well as the type of firearm and ammunition to be used. The applicant shall consent to a criminal background check. No person shall give false information in his written application. No permit shall be issued by the chief of police to any person that has been convicted of any felony, assault of an aggravated nature, family violence, or crimes involving the person or property of another. The application and a duplicate of the permit, if issued, shall be kept in the office of the chief of police. Any person who is refused a permit may appeal to the city manager. The fee for a one permit shall be $20.00.

(d) *Penalty.* Any person found guilty of violating this section may, upon conviction, be punished as provided in section 1-12.

(Code 1987, § 17-102; Ord. No. 2009-004, 3-9-09; Ord. No. 2010-011, 6-14-10)

Section 46-3. Report of treatment of wounds.

All physicians and all hospital superintendents in the city are hereby required to report to the police department all patients treated by physicians or diagnosed or known to be suffering from wounds inflicted by a dangerous or deadly weapon of any kind. Such report may be made in writing or by telephone, giving the name of the reporting person and the patient and any other pertinent data requested by the police department. All reports shall be made within 24 hours after treatment by a physician or after admission to the hospital.

(Code 1987, § 17-103)

Section 46-4. Throwing of missiles.

It shall be unlawful for any person in the city to throw any stone, rock, or other missile upon or at any vehicle, building, tree, or other public or private property, or upon or at any person in any public or private way or place except as authorized by Article II Chapter 6 of this Code.

(Code 1987, § 17-105)

Section 46-5. Drinking in public.

It shall be unlawful for any person to consume any alcoholic beverages in or upon any street, alley, sidewalk, or other public way in the city, or within any public building. Notwithstanding the foregoing, consumption of alcoholic beverages shall be allowed within areas of buildings approved for a special event by the city pursuant to sections 6-27 and 6-28 of this Code and within the Commerce Civic Center and Commerce Cultural Arts Center.

(Code 1987, § 17-107; Ord. No. 2012-003, 2-13-12)

Section 46-6. Obscuring or covering meter dials.

No person shall place any object of any sort or nature whatsoever upon or over the dials which reflect the consumption of gas, water and electricity on gas, water or electric meters installed by the city in such a manner as to obscure such dials or to in any way inhibit or interfere with such dials being read immediately without the necessity of removing such objects.

(Code 1987, § 17-108)

Section 46-7. Unlawful assembly; failure to disperse.

It shall be unlawful for any two or more persons, after having assembled on private property of any other person within the city in the absence of, and without first having obtained the permission of the owner, tenant in possession, or person in charge of such private property to assemble thereon, to fail to disperse and cease such assembly upon being directed to do so by any police officer of the city.

(Code 1987, § 17-109)

Section 46-8. Parking areas—Disorderly conduct.

(a) *Motor vehicles.* It shall be unlawful for any person, while on the parking area or lot, or any other part of the premises, of any shopping center or other business establishment providing parking for its patrons, to race the motor of any motor vehicle; to cause the wheels of any motor vehicle to spin; to stop any motor vehicle

in such manner as to cause its tires to slide or skid on the surface of such parking area or lot, or other part of such premises; or to cause to be made any loud or unseemly noise which disturbs the peace and tranquility of the city.

(b) *Alcoholic beverages.* It shall be unlawful for any person to drink beer, wine, intoxicating liquor, or any other alcoholic beverage while on the parking area or lot of any shopping center or other business establishment providing parking for its patrons.

(c) *Loitering; cruising.* It shall be unlawful for a group of three or more persons to congregate and linger at any location on the parking area, or lot, or approaches thereto, or on any other part of the premises, of any shopping center or other business establishment providing parking for its patrons. No person shall cruise in a motor vehicle in, or drive a motor vehicle on, onto, or from the parking area or lot, or any other business establishment providing parking for patrons during the hours when the businesses located in such shopping center are closed, or during the hours when such other business establishment is closed, for doing business with their patrons, provided that this prohibition shall not apply to owners and employees of such businesses while going to or leaving from work, or otherwise performing duties connected with such businesses.

(d) *Leaving vehicle unoccupied.* It shall be unlawful for any person to park, or cause to be parked, and leave unoccupied any motor vehicle on any parking area or lot, or any other part of the premises, of any shopping center or other business establishment providing parking for its patrons, except with the knowledge and consent of the operators of the business or businesses whose patrons are served by the area where such motor vehicle is so parked and left unoccupied, or with the knowledge and consent of the person in charge of the area where such vehicle is so parked and left unoccupied.

(Code 1987, § 17-110)

State law reference(s)—Parking, standing or driving vehicle in private parking areas after request not to do so, O.C.G.A. § 40-6-252.

Section 46-9. Same—Warning signs.

It shall be the duty of the owner or lessee of the parking area or lot of every shopping center, and of every other business establishment providing a parking area for its patrons of sufficient size to encourage loitering or cruising in motor vehicles in such area, to post on or immediately adjacent to such parking lot or area, and in a conspicuous location, one or more signs bearing the following legend:

Customer Parking Only.

Parking for other purposes, cruising in motor vehicles, and congregating and lingering in this parking area are prohibited.

(Code 1987, § 17-111)

Section 46-10. Destroying city property.

No person shall injure, destroy, deface, or attach signs to any property belonging to the city, including shade trees planted by the city and vehicles owned by the city.

(Code 1987, § 17-113)

State law reference(s)—Damaging, injuring or interfering with property of municipalities, O.C.G.A. § 16-7-25.

Section 46-11. Failure to return library property.

Any person who borrows from any public library in the city any book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film or other article or equipment necessary to its display or use belonging to or in the care of such public library under any agreement to return it and thereafter fails to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film, or other article or equipment necessary to its display or use shall be given written notice, mailed to his last known address or delivered in person, to return such article or equipment within 15 days after the date of such notification. Such notice shall contain a copy of this Code section. If such person shall thereafter willfully and knowingly fail to return such article or equipment within 15 days, such person shall be guilty of violation of this section and, upon conviction thereof in the municipal court, shall be punished by a fine of not more than $500.00 or imprisonment for not more than 30 days and shall be required to return such article or equipment or provide reimbursement for the replacement cost of such article or equipment.

(Ord. No. 98-01, 2-9-98)

Section 46-12. Use of tobacco products prohibited.

It shall be unlawful for any person to use tobacco products within any building or vehicle owned by the city. The city manager is authorized to designate areas on city property but outside of buildings wherein the use of tobacco products will be allowed.

(Ord. No. 98-05, 8-10-98)

Section 46-13. Drug-free zone maps.

(a) Pursuant to O.C.G.A. 16-13-32.4 and 16-13-32.5 there is hereby established a drug-free school zone consisting of the area on or within 1,000 feet of the real property of a school board or a private or public elementary or secondary school that is used for school purposes; and there is also hereby established a drug-free residential zone consisting of the boundaries of the area on or within 1,000 feet of the real property of any publicly owned or publicly operated housing project or the real property set apart for use as a park, playground, recreation center, or any other recreation purposes.

(b) The city clerk shall cause a map to be produced and reproduced depicting the location and boundaries of such areas for the drug-free school zone and the drug-free residential zones. The clerk shall be the custodian of the map and shall certify true copies of the map from time to time for use as evidence in the prosecution of the violation of state or local laws. The clerk shall cause a certified true copy of the maps to be posted in the Commerce City Hall and at such other locations as the clerk may deem appropriate. The original of the drug-free school zone map and the drug-free residential zone map shall be maintained on file with the city clerk as a official record of the city but may be revised from time to time by city council of the City of Commerce by resolution. The initial maps adopted pursuant to this section are dated the _____ day of December, 2003 entitled City of Commerce Drug-free School Map and City of Commerce Drug-free Residential Zone Map prepared by Northeast Georgia RDC, the originals of which are on file with the city clerk.

(Ord. No. 2003-22, 12-8-03)

Section 46-14. Begging or soliciting.

(a) *Begging or soliciting deemed not unlawful.* Except when performed in the manner set forth in subsections (b)(1) and (2) of this section, it shall not be unlawful to beg or solicit.

(b) *Restrictions.* It shall be unlawful for any person to beg or solicit, or exhibit oneself for the purpose of begging or soliciting by:

(1) Accosting another; or

(2) Forcing oneself upon the company of another.

(c) *Beg or solicit* defined. For the purposes of this section, "beg or solicit" shall include, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining money or other things of value.

(d) *Accosting* defined. "Accosting," for the purpose of this section, shall be defined as approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his or her person, or upon property in his or her immediate possession.

(e) *Forcing oneself upon the company of another* defined. "Forcing oneself upon the company of another" shall be defined as continuing to beg or solicit in close proximity to the individual addressed after the person to whom the request is directed made a negative response, blocking the passage of the individual addressed, or otherwise engaging in conduct which could reasonably be construed as intended to compel to a person to accede to demands.

(Ord. No. 2008-12, 6-9-08)

Editor's note(s)—Ord. No. 2008-12, adopted June 9, 2008, supplied provisions to be included in this Code as § 46-13. In order to maintain the style and numbering system of this Code, at the discretion of the editor, these provisions have been redesignated as § 46-14.

Section 46-15—46-30. Reserved.

ARTICLE II. ADVERTISEMENTS, PAMPHLETS AND HANDBILLS

Section 46-31. Distributing.

It shall be unlawful to distribute or pass out any advertisements, pamphlets or handbills on any public street, sidewalk or other city property without first obtaining a permit in compliance with the terms of section 46-32.

(Ord. No. 93-006, § 1, 4-12-93)

Section 46-32. Application for permit.

Applicants for a permit to distribute advertisements and handbills in the city shall apply in writing to the city clerk.

(Ord. No. 93-006, § 2, 4-12-93)

Section 46-33. Reserved.

Editor's note(s)—Ord. No. 2016-009, adopted September 19, 2016, repealed § 46-33 in its entirety. Former § 46-33 pertained to documents to bear address of sponsor and derived from Ord. No. 93-006, adopted April 12, 1993.

Section 46-34. Scattering.

It shall be unlawful to deliver any handbills, advertising matter or newspapers to any premises in the city except by being handed to the recipient, placed on the porch, stoop or entranceway of the building or firmly affixed to a building or vehicle so as to prevent any such articles from being blown about, becoming scattered or in any way causing litter. It shall be unlawful to deliver any advertising matter, handbills or newspapers to any premises where the owner or occupant has told the distributor or the person making the deliveries that he does not desire to receive such materials.

(Ord. No. 93-006, § 4, 4-12-93)

Section 46-35. Unattended documents.

It shall be unlawful to leave any handbills, advertising matter or newspapers unattended in any street, alley, public building or other public place, provided that this shall not prohibit the sale of newspapers in vending machines.

(Ord. No. 93-006, § 5, 4-12-93)

Chapter 50 PARKS AND RECREATION[35]

Section 50-1. Use of grounds and facilities in general.

Each person or group using the public parks and other public recreation areas shall clean up all debris, extinguish all fires, and leave the grounds in good order and the facilities in a neat and sanitary condition.

(Code 1987, § 14-101)

Section 50-2. Prohibited acts.

It shall be unlawful for any person or group using the public recreation areas to either perform or permit to be performed any of the following acts:

(1) Wilfully mark, disfigure, deface, injure, tamper with, or remove any structures, facilities, equipment, or park property or appurtenances thereto, either real or personal.

(2) Leave any bottles, broken glass, ashes, paper, boxes, cans, rubbish, garbage, or other trash on the grounds. Such refuse shall be placed in the proper receptacles where these are provided; and where receptacles are not so provided, all such refuse or trash shall be carried from the grounds and disposed of properly.

(3) Disturb the peace, or use any profane or obscene language.

(4) Endanger the safety of any person by any conduct or act.

(5) Carry, possess, or drink any alcoholic beverage on the grounds.

(6) Build or attempt to build any fire without first having obtained the permission of the recreation board.

(7) Violate any rule or regulation for the use of the public parks and other public recreation areas, approved by the city council.

(Code 1987, § 14-102)

Section 50-3. Dog parks.

(a) Certain defined areas of select parks may be designated as off-leash dog areas by the city council or city manager. Users shall bring no animals other than dogs in the area. These areas must be completely fenced with a double-gated entrance and exit system. For any area of a park designated as an off-leash dog area, the rules set forth below shall apply. All of the rules below shall be posted on a sign at each entrance to the off-leash area and posted on the city website. In the event that the rules are not posted on a sign at the park being used, users of the area shall still be held responsible for knowing and following the rules, and may be fined or otherwise penalized for failure to abide by such rules. These rules may be supplemented or

[35]Cross reference(s)—Environment, ch. 30; zoning, app. A.

State law reference(s)—Power to provide parks, recreation areas, programs and facilities, Ga. Const. art. 9, Section 2, par. 3(a)(5); authority to construct and operate parks, swimming pools, golf courses, recreation grounds and buildings used for sports, O.C.G.A. § 36-34-3; establishment of recreation systems, O.C.G.A. § 36-64-1 et seq.; state commission on physical fitness created, O.C.G.A. § 50-12-40 et seq.

amended by the city council or city manager or her/his designee should she/he determine that additional rules are needed.

(1) All users of the off-leash area shall assume all risk of injury to themselves, their dog or others and all liability for personal injury or property damages caused by them or their dog associated with use of such an area.

(2) Owners are responsible for the action of their dogs. Each dog must be kept within sight of her/his owner and under voice control. Dogs must be leashed while entering and exiting the park.

(3) Dog owners have responsibility for watching their dog's behavior. If a dog displays aggressive behavior or fights, the owner shall be responsible for immediately controlling or removing the dog from the off-leash area.

(4) No more than three dogs per owner shall be allowed in the area at one time.

(5) All dogs must wear a collar and ID tag.

(6) All dogs must be properly licensed, healthy, and have current vaccinations.

(7) No puppies under 16 weeks are allowed.

(8) No dogs in heat are allowed.

(9) No dogs are permitted to enter with pronged collars.

(10) Any dog that barks continually must be removed or muzzled by her/his owner.

(11) Owners must clean up immediately after their dogs and place in waste container.

(12) The off-leash areas have double gated entrances. Owners must close and latch both gates after entering or exiting the area.

(13) No children under the age of 13 are allowed in the area without close adult supervision.

(14) No human or animal food or treats allowed. No glass containers are allowed in the dog park.

(15) Do not feed dogs while in the area.

(16) Bicycling, skateboarding, rollerblading, hoverboards, scooter, roller skates, jogging or strollers are not allowed in the area.

(17) Dogs are not permitted on benches.

(18) The off-leash area may be closed in times of bad weather or for maintenance or at the discretion of the city manager.

(19) Incidents resulting in injury must be reported immediately to the city and the city police department.

(20) Owners must be within the dog park and supervising their dog(s) with leash readily available.

(21) Dog handlers must be at least 16 years of age.

(Ord. No. 2022-008, 10-17-22)

Chapter 54 PEDDLERS AND SOLICITORS[36]

ARTICLE I. IN GENERAL

Section 54-1—54-25. Reserved.

ARTICLE II. PEDDLERS

Section 54-26. 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:

Pecuniary gain means the sale for profit the net proceeds of which will constitute income for purposes other than religious or charitable purposes.

Peddlers means persons who sell for pecuniary gain goods or services or who solicit orders for goods or services which are to be sold for pecuniary gain from any location other than a permanent business location within the city. The term "peddlers" shall not include sellers of fresh or unprocessed fruits, vegetables or other produce or agricultural products who deliver or sell such produce door to door or from a validly parked vehicle.

Permanent business location means an address established with and recognized by the U.S. Postal Service upon which are improvements complying with the zoning, fire and building codes of the city.

(Code 1987, § 18-205(1))

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

Section 54-27. Prohibited areas.

(a) No peddler shall be allowed to operate from or upon any public street, sidewalk, park or school yard area within the city.

(b) No peddler shall be allowed to approach or venture upon the property of private residences or businesses for the purpose of soliciting the sale of or the selling of goods or services unless such peddler has first obtained permission of the person or legal entity which has lawful possession of the premises involved. The burden of showing such permission shall be upon the peddler involved.

(Code 1987, § 18-205(2))

[36]Cross reference(s)—Businesses, ch. 18.

State law reference(s)—Disabled veterans and blind persons engaging in peddling, O.C.G.A. § 43-12-1; Georgia Charitable Solicitations Act of 1988, O.C.G.A. § 43-17-1 et seq.; peddlers and itinerant traders, O.C.G.A. § 43-32-1 et seq.; Transient Merchants Act of Georgia, O.C.G.A. § 43-46-1 et seq.

Section 54-28. Permit required; authorized activities.

Peddlers may, after first obtaining a license to do so from the city clerk, operate in the following manner:

(1) Operations shall be confined to premises which are obtained by permission in writing of the property owner.

(2) Such premises shall be inspected by the chief of police to determine that safe entry and exit is provided for between the premises and any public street or highway.

(3) Parking places shall be clearly marked for motor vehicles of customers and all such parking areas shall be located on the premises for which permission is obtained. The peddler shall be responsible to ensure that no customer parks a vehicle or trespasses over other private property in reaching the premises upon which the peddling activity is carried out.

(4) A minimum of five vehicle parking places shall be required.

(5) Adequate sanitary restroom facilities shall be provided on the premises.

(6) Any customer purchasing goods from a peddler shall be provided at the time of sale a written bill of sale which warrants title to the goods sold and which is signed by the true and lawful owner of the goods sold, such signature being affixed in the presence of a notary public of the state. All costs of compliance with this section shall be borne by the peddler.

(7) In addition to compliance with chapter 18, pertaining to businesses, any peddler who operates in the city shall provide the chief of police with an application and shall post a bond in cash or provide a surety bond from a licensed insurer in an amount set by the city council. Such bonds shall be surrendered within 30 days of the cessation of operations in the city by the peddler provided the terms of the bond are complied

with. The peddler shall provide the city written notice of the date of cessation of operations.

(Code 1987, § 18-205(3))

Section 54-29. Violation.

A violation of this article shall be recognized as a public nuisance and, upon conviction in the municipal court, such violator shall be fined as provided in section 1-12.

(Code 1987, § 18-205(4))

Section 54-30—54-50. Reserved.

ARTICLE III. CHARITABLE SOLICITATIONS[37]

[37]State law reference(s)—Disabled veterans and blind persons engaging in peddling, O.C.G.A. § 43-12-1; Georgia Charitable Solicitations Act of 1988, O.C.G.A. § 43-17-1 et seq.; peddlers and itinerant traders, O.C.G.A. § 43-32-1 et seq.; Transient Merchants Act of Georgia, O.C.G.A. § 43-46-1 et seq.

Section 54-51. Exemption.

This article shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are in the form of collection or contributions at the regular assemblies of any such organization or church.

(Code 1987, § 18-208(3))

Section 54-52. Registration required.

Any person who wishes to solicit donations or contributions for, or to sell any insignia or novelty on the streets of the city on behalf of, or under the sponsorship of, any charitable, religious, social, patriotic, or civic club or organization shall be required to register such solicitation or sale with the chief of police at least 48 hours in advance of such event and to obtain a permit therefor.

(Code 1987, § 18-208(1))

Section 54-53. Form of registration.

The registration required by this article shall be in writing, shall be signed by the chief officer of the club or organization, and shall contain the following information:

(1) The name and object of the charitable, religious, social, patriotic, or civic club or organization conducting or sponsoring the solicitation or sale to which the registration relates;

(2) The day or days on which the solicitation or sale will take place;

(3) The object for which the funds to be derived from the solicitation or sale will be utilized; and

(4) The name and address of the chief officer of the club or organization conducting or sponsoring the solicitation or sale.

(5) The registration shall have attached to it proof that the club or organization has registered with the Georgia Secretary of State's Office as required by Georgia Law or a statement that such club or organization is exempt from such state registration in accordance with state law.

(6) The locations at which the solicitation will take place to include all streets or highways with the city limits where such solicitation shall take place.

(Code 1987, § 18-208(2); Ord. No. 2005-001A, 2-14-05)

Section 54-54. Display of permit.

Charitable solicitors shall be required to exhibit their permits at the request of any citizen.

(Code 1987, § 18-208(4))

Section 54-55. Unlawful acts.

(a) It shall be unlawful for any person to execute a registration which contains any false statement.

(b) It shall be unlawful for any person to solicit donations or contributions or sell any insignia or novelty on the streets of the city purportedly in behalf of, or under the sponsorship of, any charitable, religious, social, patriotic, or civic club or organization which does not in fact exist.

(Code 1987, § 18-208(5))

Chapter 58 SOLID WASTE[38]

ARTICLE I. IN GENERAL

Section 58-1—58-25. Reserved.

ARTICLE II. SOLID WASTE COLLECTION AND DISPOSAL

Section 58-26. Purpose.

The purpose of the rules and regulations contained in this article is to provide for the protection of the public health by prescribing the manner of storage, collection, transportation and disposal of residential, commercial and industrial waste, rubbish, garbage and refuse.

(Ord. No. 93-003, § 1, 4-12-93)

Section 58-27. 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:

Collection means the process whereby a person who, under agreement, verbal or written, with or without compensation, does the work of collecting and/or transporting solid waste from industries, offices, retail outlets, businesses, institutions and/or similar locations, or from residential dwellings; provided, however, that this definition shall not include an individual collecting and/or transporting waste from his own single-family dwelling unit.

Disposal site means the location or land area where the final disposition of solid waste occurs.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Hazardous waste means solid or liquid waste material resulting from the manufacture or use of pesticides and drugs; pathological wastes; highly flammable or explosive wastes; toxic wastes; sewage sludge; and other waste material determined to be a likely hazard to the public health, safety or environment, except radioactive waste materials as provided for in rules of the department of human resources, chapter 270-5-20, entitled Radioactive Materials.

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[38]Cross reference(s)—Buildings and building regulations, ch. 14; environment, ch. 30; floods, ch. 38; streets, sidewalks and other public places, ch. 62; subdivisions, ch. 66; utilities, ch. 78.

State law reference(s)—Authorization to provide garbage and solid waste collection and disposal, Ga. Const. art. 9, Section 2, par. 3; Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq.; local and regional solid waste plans, O.C.G.A. § 12-8-31.1; hazardous waste disposal, O.C.G.A. § 12-8-61 et seq.; Litter Control Law, O.C.G.A. § 16-7-40; transporting garbage or waste across state or county boundaries pursuant to contract, O.C.G.A. § 36-1-16; Resource Recovery Development Authorities Law, O.C.G.A. § 36-63-1 et seq.; littering highways, O.C.G.A. § 40-6-249.

Industrial waste means waste materials generated in industrial operations.

Putrescible waste means wastes that are capable of being decomposed by microorganisms, including kitchen wastes, manure, offal, hatchery and poultry wastes and garbage.

Refuse means all putrescible and nonputrescible solid wastes, except body wastes, including garbage, rubbish, ashes, street cleaning, dead animals, abandoned automobiles and solid commercial and industrial wastes.

Rubbish means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Sanitary landfilling means a method of disposing of putrescible waste and/or hazardous waste on land by placing earth cover thereon.

Scavenge means uncontrolled picking from discarded waste materials.

Solid waste means putrescible and nonputrescible wastes, except water-carried body wastes, including garbage, rubbish, ashes, street refuse, dead animals, sewage sludge, animal manures, industrial wastes, residue from incineration, food processing wastes, construction wastes, hazardous wastes and any other waste material in a solid or semisolid state not otherwise defined in this article.

(Ord. No. 93-003, § 2, 4-12-93)

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

Section 58-28. Enforcement.

(a) *In general.* The public works and/or the sanitation superintendent, who are responsible for the administration and enforcement of this article, shall, in the exercise of his solid waste management duties:

(1) Supervise the collection of solid waste, including the operation and maintenance of equipment and the supervision of personnel;

(2) Establish collection schedules in accordance with the provisions of this article; and

(3) Coordinate the city's use of the sanitary landfill operated by the county and such other disposal facilities as may be required.

(b) *Limitations of authority.* All regulatory actions of the director and/or superintendent shall be subject to the review of the city manager.

(c) *Appeal.* Any person aggrieved by a requirement of, or a fee charged by, the director and/or superintendent shall have the right to appeal to the city manager who may, upon hearing, confirm, modify or revoke such requirement or fee.

(Ord. No. 93-003, § 3, 4-12-93)

Section 58-29. Precollection.

(a) *In general.* No person shall keep or store solid waste outside of any residence or building within the city, except in proper containers for collection, as set forth in this section. Any unauthorized accumulation of solid waste is hereby declared to be a nuisance and is prohibited. The sanitation superintendent or the director of public work by written notice shall notify the owner or occupant of any premises with such solid waste accumulation to remove same. Failure to remove such accumulation within five working days of the date of such written notice to do so shall be deemed a violation of these regulations and subject to penalties

hereinafter set forth. A separate violation shall be deemed committed each day upon which such unlawful accumulation continues.

(b) *Containers.*

(1) One two-wheeled, roll-away garbage container shall be provided by the city to the occupant of each residence or dwelling unit. Any additional containers desired by the occupant may be purchased from the city. Any replacement containers needed prior to the useful life or from negligence by the owner of the container will also be the responsibility of the occupant.

(2) Multifamily complexes may be furnished either individual wheeled containers or commercial steel containers of a size and type specified by the sanitation superintendent.

(3) Disposable paper or plastic bags of a type, size and material designed for solid waste disposal may be used on those occasions when the quantity of refuse is greater than can be accommodated in the wheeled container. However, it is the intention of the city to collect and service residential solid waste through the use of the rolled containers. Continued use of additional bags could warrant the purchase of an additional container.

(4) Commercial and industrial establishments shall be furnished access to either their own individual steel containers or community steel containers shared by more than one customer. These containers will be sized and typed by either the public works director or the sanitation superintendent. Notwithstanding the foregoing, commercial and residential establishments located within the Central Business District are required to utilize containers provided by the city and shall not be allowed to use or maintain privately owned containers with the exception of an individual business that generates sufficient refuse to warrant an independent commercial dumpster at the discretion of the city manager, with container placement as required by the city manager or his/her designee, and such business shall clean or provide for cleaning of their containers and areas surrounding containers to maintain them in a sanitary manner.

(c) *Placement.* On days designated as collection days, garbage and/or rubbish from dwelling units shall be placed for collection at the curb or beside the roadway, but not in the gutter or street. No roll-away containers shall be placed at the street on noncollection days.

(d) *Scavenging.* No person, other than the owner or authorized collection personnel, shall sift the contents of or remove anything from containers, boxes or bundles containing garbage or rubbish.

(Ord. No. 93-003, § 4, 4-12-93; Ord. No. 2013-005, 3-18-13)

Section 58-30. Collection.

(a) *Frequency.* Garbage shall be collected from residential areas once a week. Rubbish shall be collected in residential areas on a regular basis, usually once per week. Garbage and rubbish shall be collected from commercial and business establishments as often as required.

(b) *Limitations.*

(1) Large animal carcasses over 20 pounds, or waste from construction, demolition, major landscaping or processing operations, or tires will not be collected, transported or disposed of by public facilities; but such waste collection, transportation and disposal shall be by the owner and/or generators of such waste or animals.

(2) Industrial generated waste may be collected, transported and disposed of by public facilities on a contract basis.

(3) It shall be a violation of these regulations to place or to cause to be placed in any container, box or bundle, or otherwise for collection, any hazardous waste of any kind except upon specific prior arrangements with the sanitation superintendent or the public works director.

(4) It shall be a violation of these regulations to place or to cause to be placed any solid waste material generated from outside the city into any container within the city designed to handle solid waste materials.

(5) It shall be a violation of these regulations to place or to cause to be placed any household garbage in any steel container within the city designed for the use of commercial and/or industrial customers.

(6) Limbs or tree trunks resulting from the cutting of trees on private property must be disposed of by the property owner or tree service contractor. This shall not include small cuttings resulting from the routine trimming of shrubbery, which will be picked up and disposed of by solid waste personnel.

(7) The city shall not pick up any building or construction materials resulting from remodeling, renovation or new construction.

(Ord. No. 93-003, § 5, 4-12-93)

Section 58-31. Disposal.

All disposal of solid waste shall be at disposal sites operated in accordance with state laws and with rules and regulations of the state department of natural resources, and no other place.

(Ord. No. 93-003, § 6, 4-12-93)

Section 58-32. Fees; classification of establishments.

(a) Monthly charges for public collection and disposal of solid waste inside the city shall be as fixed from time to time by the mayor and council.

(b) For the purpose of determining the classification of establishments as to size of container and frequency of pickup, the sanitation superintendent and/or the director of public works shall make such classification based on volume of waste generated by each customer served by public collection. They shall maintain a weekly collection list of all steel container users to be turned in to the utility billing clerk each month.

(Ord. No. 93-002, 4-10-93; Ord. No. 93-003, § 7, 4-12-93)

Section 58-33. Billing.

(a) *Against whom levied.* Service charges in accordance with the schedule set down in section 58-32 are levied against both the owner and the occupant of premises served, jointly and severally, but collecting from one shall not relieve the other.

(b) *Charges for solid waste collection and disposal.* Charges for solid waste collection and disposal service shall be billed by the utility billing clerk along with other utilities at each customer's address. When such payment has not been made by the 15th day of the billing date, a ten percent penalty shall be added and collected. When such payment has not been made by the 20th day of the billing date, service shall be discontinued until all arrears, including penalty, have been paid in full.

(Ord. No. 93-003, § 8, 4-12-93)

Section 58-34. Penalties.

Any person convicted of violating any of the provisions of this article shall, upon conviction, be punished as provided in section 1-12.

(Ord. No. 93-003, § 9, 4-12-93)

Section 58-35. Brush, leaf and limb service.

(a) *Brush, leaf and limb collection, generally.* The public works and/or the samitation department shall provide collection of brush, leaf and limbs throughout the city. This service will be provided to residential customers; however, commercial customers may receive this service on a cost-of-service basis after making arrangements with the public works department.

(b) *Frequency of service, amount collectible.* The city shall not collect more than one load at any one residential location per predetermined cycle unless colelcted as an unscheduled service. A "load" is defined as no more than six cubic yards of material.

(c) *Placement and preparation of items generally.* Brush, limbs, and leaves shall be placed near the street but not in the street and not on any public sidewalk. Limbs shall not be over six feet in length or six inches in diameter and shall be completely trimmed. All leaves and grass shall be placed in paper lawn bags or other approved biodegradable containers and placed near the street. No plastic bagging material can be used in disposing of leaves and/or grass materials. Alternate containers must be approved by the director of the public works department. Dirt, rocks and plant roots containing soil shall not be collected by the city.

Leaves, limbs, grass or other trimmings shall be placed in an orderly manner so as not to obstruct the free and normal flow of any drainage system or the safe vision or movement of any pedestrian or vehicluar traffic. Such debris shall not be placed in the gutter of any roadway at any time.

(d) *Placement of items by persons other than property owner.* Limbs not from trees being removed by any person other than the owner of the property shall not be collected or hauled by the city. Individuals or companies under contract to remove trees or landscaping shall haul and dispose of all such refuse. All limbs, leaves and rubbish placed at the street must be obtained from the adjoining property and not hauled in from another site. These requirements also apply to utility or railroad companies, which trim vegetation away from their wires, equipment or tracks to maintain their right-of-way over public and private land.

(e) *Items placed on vacant lots.* Leaves or limbs put on vacant lots by property owners or violators shall not be collected.

(f) *Entry on property by city vehicles and employees.* Except as otherwise provided, city-owned vehicels shall not enter upon private property to collect limbs or other solid waste, and employees are hereby prohibited from entering upon private property to collect limbs which are placed more than five feet behind the sidewalk, ditch, or property line whichever is the farthest from the centerline of the street.

(g) *Unscheduled service.* The minimum charge for unscheduled service shall be $50.00 per vehicle load or part thereof plus disposal cost based on the current landfill rates for the type of materials collected for all customers requesting additional municipal solid waste and/or leaf and limb collection services by the city's public works department with the confines of the city. The city shall charge a customer for collection and disposal expenses associated with the removal of waste which does not comply with this article and shall charge a minimum of $50.00 per vehicle load or part thereof, plus the cost based on the current landfill rates for the type of materials collected. The city may include such charges to the customer on the next utility bill to the customer, if not paid in advance.

(Ord. No. 2008-007, 3-10-08)

Chapter 62 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES[39]

ARTICLE I. IN GENERAL

Section 62-1. Maintenance and repair of public streets.

All maintenance and repair of public streets, alleys, curbs, sidewalks, and other public ways shall be under the supervision of the city council, which body shall have the responsibility of enforcing all provisions of this Code and all ordinances of the city relating to such public ways.

(Code 1987, § 13-101(1))

Section 62-2. Maintenance of sidewalks.

It shall be the duty of all owners of property in the city upon which sidewalks have been laid to keep such walkways properly maintained at all times and to remove from them all materials and substances, including snow and ice, hazardous to passersby within 12 hours after such material or substance accumulates thereon or within less time, if so ordered by the chief of police or the city council.

(Code 1987, § 13-101(2))

Section 62-3. Maintenance of property between sidewalks and streets.

All persons who own real estate in the city which abuts upon any sidewalk which is paved shall be required to keep that portion of such sidewalk which lies between the property line and the curbline of the adjoining street, and upon which his real estate abuts, in good and smooth condition and free from growing weeds and other obnoxious and unsightly vegetation or other things which would mar or detract from the beauty and cleanliness of the street upon which their property abuts. Any property owner who shall place or allow grass to grow upon the portion of the sidewalk lying between the property line and the curbline of the street as aforesaid, and upon which his real estate abuts, shall keep such grass properly mowed and free from rubbish of all kinds. If such owners are not in the possession of their property, this section shall apply to their tenants or those who have possession or control of the same.

(Code 1987, § 13-101(3))

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[39]Charter reference(s)—Roads, § 6.16.

Cross reference(s)—Animals, ch. 10; buildings and building regulations, ch. 14; businesses, ch. 18; cemeteries, ch. 22; environment, ch. 30; fire prevention and protection, ch. 34; floods, ch. 38; offenses and miscellaneous provisions, ch. 46; solid waste, ch. 58; subdivisions, ch. 66; traffic and vehicles, ch. 74; utilities, ch. 78; vehicles for hire, ch. 82; zoning, app. A.

State law reference(s)—Authority to construct and maintain streets and roads, Ga. Const., art. 9, Section 2, par. 3; powers with respect to municipal street system, O.C.G.A. § 32-4-92; power of city to open, close or extend public streets, alleys and sidewalks, O.C.G.A. § 36-34-3; street improvements, O.C.G.A. § 36-39-1 et seq.; executions for collection of assessments for paving streets and laying sewers, O.C.G.A. § 48-5-358.

Section 62-4. Defacing sidewalks, streets, and curbs.

It shall be unlawful for any person to deface any public sidewalk, street, or curb in the city by painting any signs thereon whether for commercial advertising purposes or not, or to walk on, drive any vehicle upon or injure in any way newly laid street, sidewalk, or curbing pavement while the same is guarded by a warning sign or barricade or is soft or newly laid.

(Code 1987, § 13-101(4))

Section 62-5. Obstructions.

It shall be unlawful for any person to cause, create, or maintain any obstruction on any street, alley, sidewalk, or other public way, except as may be provided in this chapter.

(Code 1987, § 13-101(5))

Section 62-6. Deposits and discharges onto streets and sidewalks.

(a) It shall be unlawful for any person to deposit on any street or sidewalk any material which may be harmful to the pavement thereof, or any waste material or any glass or other article which may do injury to any person, animal, or property.

(b) It shall be unlawful for any person to discharge or allow to be discharged onto any public street or sidewalk any water or other fluid material containing objectionable material such as sewerage, waste milk, or other organic material.

(Code 1987, § 13-101(6))

Section 62-7. Report of defects, obstructions, deposits, and discharges.

It shall be the duty of every city officer and employee who becomes aware of any defect or obstruction, or of any unlawful deposit or discharge, in or on any public street, alley, curb, sidewalk, or other public way of the city, to report the same to the mayor and council, as soon as possible.

(Code 1987, § 13-101(7))

Section 62-8. Private use.

It shall be unlawful for any person to use any street, sidewalk, or other public place as space for the display of goods or merchandise for sale or to

write or make any sign or advertisement on any such pavement.

(Code 1987, § 13-101(8))

Section 62-9. Encroachments.

It shall be unlawful for any person to erect or maintain any building or structure which encroaches upon any public street or property, or to erect any poles or wires or maintain any poles or wires over any public place, street, alley, sidewalk, or other public way, without having first obtained a permit from the city clerk in the manner specified in this chapter.

(Code 1987, § 13-101(9))

Section 62-10. Openings.

It shall be unlawful for any person to construct or maintain any opening or stairway in any public street, sidewalk, or alley without first obtaining a permit from the city clerk in the manner specified in this chapter. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing approved by the city council.

(Code 1987, § 13-101(10))

Section 62-11. Trees and shrubs.

It shall be unlawful for any person to plant, remove, injure, or cut any tree, bush, or shrub in or from any public street, parkway, or other public place without first obtaining a permit therefor from the city clerk in the manner specified in this chapter.

(Code 1987, § 13-101(11))

Section 62-12. Awnings.

(a) All awnings across the sidewalks of the city shall be not less than seven feet in height from the sidewalk and shall not be constructed without first having obtained a permit from the city council for the erection of same, which permit shall state types and material of which construction may be done.

(b) It shall be unlawful for any person to rebuild or repair any awnings constructed of metal, over the sidewalks of the city, without first obtaining a permit from the city council.

(c) It shall be the duty of the chief of police to inspect all awnings over the sidewalks and any awnings found to be unsafe will on the recommendation of the chief of police be condemned and ordered removed by the city council.

(Code 1987, § 13-101(12))

Section 62-13. Driveways and curbs.

(a) *Permit required.* No person shall begin to construct, reconstruct, repair, alter, or grade any driveway, curb, or curb-cut on the public streets without first obtaining a permit from the city clerk.

(b) *Fee.* The permit fee shall be in an amount as established by the city council from time to time.

(c) *Bond.* The city council shall have the authority to require an applicant for a permit under this section to file a bond with his application conditioned to protect and save harmless the city from all claims for damages or injury to any persons by reason of the proposed work.

(Code 1987, § 13-103)

Section 62-14. Use of rollerskates, rollerblades, skateboards, and bicycles in the central business district.

(a) It shall be unlawful for any person to rollerskate, rollerblade, ride a skateboard, or ride a bicycle on any public sidewalk or any public parking lot located within the area designated as the central business district on the city's zoning map.

(b) It shall be unlawful for any person to rollerskate, rollerblade or ride a skateboard on any public street within the area designated as the central business district on the city's zoning map.

(c) On all sidewalks located outside the central business district, any person riding a bicycle upon such sidewalk shall yield the right-of-way to any pedestrian.

(d) Not withstanding the foregoing provisions, the mayor and city council may designate an area or areas within the city central business district wherein it may be permitted for persons to rollerskate, rollerblade, ride a skateboard or ride a bicycle.

(Ord. No. 2007-002, 1-8-07; Ord. No. 2007-005, 4-9-07)

Section 62-15—62-35. Reserved.

ARTICLE II. PERMITS

Section 62-36. Application.

Every person required to secure a permit under the provisions of this chapter, unless otherwise specifically provided, shall submit a written application for such permit to the city clerk. The written application shall include the following:

(1) The name and address of the applicant;

(2) The purpose for which the application is submitted;

(3) The nature and location of any work proposed to be done and the name of the person or firm who is to do such work;

(4) The estimated cost of the proposed work; and

(5) The date of commencement and date of completion of the proposed work and other dates or plans as may reasonably be required by the city clerk or the city council.

(Code 1987, § 13-104(1))

Section 62-37. Fee.

Unless otherwise specifically provided, each application for a permit under this article shall be accompanied by a permit fee as established by the city council from time to time.

(Code 1987, § 13-104(2))

Section 62-38. Issuance of receipts.

The city clerk shall issue a receipt to the applicant for the amount of the fee tendered with the application for a permit under this article, provided that such receipt shall not be construed as approval of the application.

(Code 1987, § 13-104(2)(a))

Section 62-39. Rebate of fee.

Upon the disapproval of any application for which a fee has been submitted under the provisions of this article, the city clerk shall refund such fee.

(Code 1987, § 13-104(2)(b))

Section 62-40. Review of application; issuance of permit.

Upon receipt of the application for a permit, the city clerk shall forward such application to the city council, which shall approve or disapprove such application within one month after receipt thereof. Upon receipt of an approved application from the city council, the city clerk shall issue a permit to the applicant therefor, which permit shall state the nature of the work to be done or activity to be carried out and bear the date of issuance and the signature of the city clerk.

(Code 1987, § 13-104(3))

Section 62-41. Display.

All permits issued under this article shall be kept in a conspicuous place at the site of the work or activity to be engaged in.

Section 62-42—62-60. Reserved.

ARTICLE III. STREET CONSTRUCTION, IMPROVEMENTS

Section 62-61. Council resolution.

Whenever the improvement of any street or part thereof shall be deemed necessary by the city council, a resolution stating the nature and location of the proposed improvement shall be declared and published once a week for three consecutive weeks in the newspaper in which the county sheriff's advertisements are published. If the owners of a majority of the lineal feet of frontage of the land abutting on the proposed improvement do not, within 15 days after the last day of publication of such resolution, file with the city clerk a written protest against such improvement, contracts for the work to be done shall be entered into and assessments and liens shall be fixed in accordance with the provisions of O.C.G.A. § 36-39-20.

(Code 1987, § 13-102(1))

Section 62-62. Petition by property owners.

If the owners of a majority of the lineal feet of frontage of the land liable to assessment for a street construction or improvement shall petition the city council for such improvement, citing O.C.G.A. § 36-39-3 and

designating by general description the improvement to be undertaken and the street or part thereof to be improved, it shall thereupon be the duty of the city council to proceed, in accordance with O.C.G.A. § 36-39-1 et seq., to cause such improvements to be made. In such cases, the council resolution, as specified in section 62-61, shall not be required.

(Code 1987, § 13-102(2))

Section 62-63. Permit required.

It shall be unlawful for any person to construct or lay any pavement for or on any public street, sidewalk, curb, alley, or other public way, or to repair the same, without having first obtained a permit from the city clerk.

(Code 1987, § 13-102(3))

Section 62-64. Bond.

Each applicant for a permit to construct or improve any pavement on any public street, sidewalk, curb, alley, or other public way, shall be required to file a bond in sufficient amount with surety to be approved by the city council, conditioned to indemnify the city for any loss or damage caused by, or resulting from, the work undertaken.

(Code 1987, § 13-102(4))

Section 62-65. Specifications generally.

All street and sidewalk pavements and all curbing shall be laid in conformity with the specifications established or approved, from time to time, by the city council.

(Code 1987, § 13-102(5)(a))

Section 62-66. Curb ramping.

The standard for construction of curbs on each side of any city street, or any connecting street or road for which curbs have been prescribed, shall be not less than one ramp per lineal block giving on the crosswalks at intersections. Such ramps shall be at least 40 inches wide and so constructed as to allow reasonable access to the crosswalk for physically handicapped persons.

(Code 1987, § 13-102(5)(b))

Section 62-67. Barricades.

Any person laying or repairing any pavement on a street, sidewalk, or other public place shall maintain suitable barricades to prevent injury to any person or vehicle by reason of the work, which barricades shall be protected by a light at nighttime.

(Code 1987, § 13-102(6))

Section 62-68—62-90. Reserved.

ARTICLE IV. PARADES, DEMONSTRATIONS, ASSEMBLIES AND PICKETING[40]

Section 62-91. Definitions.

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

Assembly means a group of two or more persons who are together for a common cause or purpose, who stand, walk, congregate or assemble upon any of the sidewalks, streets or public property of the city, who evidence their cause by signs, slogans, common dress, solicitation of money or membership, public speech or the distribution of written materials.

Demonstration and *picketing* are given their usual meaning, but in any event any such activity must first be defined as an "assembly" to be included in the context in this article.

Parade means any procession on a public street exception funerals, and military activities, containing ten or more persons or five or more vehicles.

(Code 1987, § 18-204(1))

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

Section 62-92. Permit—Required, when application due.

(a) Any person desiring to stage a parade, demonstrate or assemble, or engage in picketing, on the public streets, sidewalks, or public area of the city shall make application for a permit to the city clerk not later than 4:00 p.m., three days prior to the day that such proposed activity is intended to be staged or carried out. Such application shall be filed with the city clerk in writing except that any application for activity on any of the state highways in the city must be filed 30 days prior to the planned activity.

(b) At least 180 days shall elapse between the issuance of successive permits to the same person, corporation or group.

(Code 1987, § 18-204(2))

Section 62-93. Same—Applications.

An application and permit shall be required for each activity coming under the provisions of this article; provided, however, only one application and permit shall be required for each proposed parade, demonstration, assembly, or picketing site and course of picketing.

(Code 1987, § 18-204(3))

Section 62-94. Same—Consideration, issuance.

(a) A permit required by this article shall be granted only after review and approval by the parade and assembly committee, which shall consist of the city manager, the chief of police and city attorney. The parade and assembly committee shall be empowered to determine and reasonably restrict the time and duration of the

[40]State law reference(s)—Preventing or disrupting lawful procession, O.C.G.A. § 16-11-34; operation of motorcycles and motor vehicles in parades, O.C.G.A. § 40-6-7; funeral processions, O.C.G.A. § 40-6-76.

proposed activity, the number of persons to participate in such activity, the streets or locations where such activity shall be allowed, so as not to impair the health and safety and convenience of the public generally.

(b) The parade and assembly committee shall consider at least the following factors before making its decision:

(1) Traffic densities involved on the streets or sidewalks during the time for which the permit is requested.

(2) Police and fire protection required and available at the time and place requested.

(3) Street and sidewalk condition in the area requested.

(4) Other public or private activities known to occur during the same time and place which would impact public safety and convenience.

(5) Sanitary facilities available in the area requested.

(6) Noise impact analysis for the time and area requested.

(7) Any other matter which is likely to affect the public order, safety, health or welfare of the citizens including those participating in the activity.

(Code 1987, § 18-204(2))

Section 62-95. DOT requirements.

Parades which are scheduled to pass over or cross any of the state highways which pass through the city must also be permitted by the state department of transportation. The city will assist in obtaining the correct permit; however, no city permit will be issued unless the required state permit is received.

(Code 1987, § 18-204(6))

Section 62-96. Supervision requirement.

All activities coming under this article shall be conducted under the supervision of the person making application for the same, and shall be conducted in a peaceable and orderly manner in compliance with the laws and ordinances applicable thereto.

(Code 1987, § 18-204(4))

Section 62-97. Signs and banners.

In the conduct of activities coming under this article, no signs, shields or banners shall be placed or carried by any person upon the sidewalks of this city that extend beyond the width of the person's body or extend more than 24 inches above the person's head. Persons carrying any such signs, shields or banners shall be at least ten feet apart, shall not stand or loiter in front of any doorway, driveway intersection, and shall not interfere with the general flow of traffic, whether pedestrian or vehicular.

(Code 1987, § 18-204(5))

Section 62-98. Unlawful activities.

(a) It shall be unlawful for any person to promote, organize or hold, or to assist in promoting, organizing or holding, or to take part or participate in any parade, assembly, picketing or other public demonstration in the streets, sidewalks or other public areas of the city, unless a permit therefor has been secured from the city clerk.

(b) It shall be unlawful for any person to conduct a parade, assembly or demonstration or picketing at any time other than the time specified in the permit therefor.

(c) It shall be unlawful for any person to conduct a parade, assembly or demonstration or picketing along, upon or over any street, sidewalk or public area other than those set out in the permit issued as provided in this article.

(Code 1987, § 18-204(7))

Section 62-99. Revocation of permit.

If any participant during the course of the activity permitted under this article breaches any law of the United States, this state or any ordinance of the city and an arrest is made or citation issued, the permit may be immediately revoked by the chief of police or senior police officer on duty whereas the activity shall cease immediately.

(Code 1987, § 18-204(9))

ARTICLE V. UTILITY ACCOMMODATION POLICY[41]

Section 62-100. Intent and purpose.

The City of Commerce (the "city") is vitally concerned with the use, construction within, and occupancy of all rights-of-way in the city as such rights-of-way are a valuable and limited resource which must be utilized to promote the public health, safety, welfare, economic development of the city and to protect public work infrastructure. Therefore, the city, under the authority of the Laws and Constitution of the State of Georgia, including but not limited to Article 9, Section 1, paragraphs 2 and 3 of the Georgia Constitution, 36-1-20 and O.C.G.A. § 32-4-42(6), has adopted this ordinance for the purpose of regulating public and private entities which use the City rights-of-way.

(Ord. No. 2016-002, § I(62-90), 2-15-16)

Section 62-101. Scope.

The provisions of this chapter shall apply to all utilities and facilities occupying the rights-of-way as provided herein.

(Ord. No. 2016-002, § I(62-91), 2-15-16)

Section 62-102. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations have the meanings set forth herein. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined

[41]Editor's note(s)—Ord. No. 2016-002, § I, adopted Feb. 15, 2016, supplied provisions to be added to this Code as Art. V, §§ 62-90—62-122. In order to maintain the existing numbering system and ease of use, at the discretion of the editor, these provisions have been redesignated as §§ 62-100—62-132 to read as set out herein.

shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

City means the City of Commerce, Georgia.

Codified ordinances means the Codified Ordinances of the City of Commerce, Georgia.

Construct means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install or remove signs, or facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right-of-way.

Construction means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing or removing signs or facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construction shall also include the act of opening, boring and/or cutting into the surface of any part of the right-of-way.

Director means the City Manager of the City of Commerce, Georgia, or his or her designee;

Emergency means a condition that poses a clear and immediate danger to life, health, or safety of a person, or of significant damage or loss of real or personal property;

Facility or *facilities* means any tangible thing, including but not limited to pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, appurtenances, appliances and future technology of any utility in, on, along, over, or under any part of the rights-of-way within the city;

Facilities representative(s) means the specifically identified agent(s)/employee(s) of a utility who are authorized to direct field activities of that utility and serve as official notice agent(s) for facilities related information. Utility shall be required to make sure at least one of its facilities representatives available at all times to receive notice of, and immediately direct response to, facilities related emergencies or situations.

FCC means the Federal Communications Commission or any successor thereto.

Permit means an authorization which grants permission to conduct specific regulated activities on, in, over, under or within any public right-of-way, and which may be subject to conditions specified in a written agreement with the city or in a related provision of this Code of Ordinances.

Right(s)-of-way means the surface and space in, on, above, within, over, below, under or through any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, or any other place, area, or real property owned by or under the legal or equitable control of the city, now or hereafter, that consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing facilities.

Service(s) means the offering of any service by a utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision of any service by a utility between two or more points for a proprietary purpose to a class of users other than the general public.

Service agreement means a valid license agreement, service agreement, franchise agreement, or operating agreement issued by the city or state pursuant to law and accepted by a utility or entered into by and between the city and a utility, which allows such utility to operate or provide service within the geographic limits of the city.

Street or *streets* means the surface of, as well as the spaces above and below, any and all the streets, alleys, avenues, roads, bridges, tunnels and public places of the city within the corporate limits of the city, as the same now exist or may be hereafter extended or altered, and any location thereon, thereover or thereunder, and any portion thereof.

Transfer means the disposal by the utility, directly or indirectly, by gift, assignment, sale, merger, consolidation, or otherwise, of more than 50 percent at one time of the ownership or controlling interest in the

facilities, or of more than 50 percent cumulatively over the term of a written approval of registration of such interests to a corporation, partnership, limited partnership, trust, or association, or person or group of persons acting in concert.

Unused facilities means facilities located in the rights-of-way which have remained unused for 12 months and for which the utility is unable to provide the city with a plan detailing the procedure by which the utility intends to begin actively using such facilities within the next 12 months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next 12 months, or, that the availability of such facilities is required by the utility to adequately and efficiently operate its facilities;

Utility or *utilities* means all privately, publicly, or cooperatively owned systems for producing, transmitting, or distributing communication, data, information, telecommunication, cable television, video services, power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, fire and police signals, traffic control devices, and street lighting systems, and housing or conduit for any of the foregoing, which used to refer to the owner, operator, utility, service, contractor or subcontractor, or any agent thereof, of any above-described utility or utility facility.

(Ord. No. 2016-002, § I(62-92), 2-15-16)

Section 62-103. Registration required.

Each utility who occupies, uses or has facilities in the rights-of-way at the time of passage of this article, including by lease, sublease or assignment, to operate facilities located in the rights-of-way, unless specifically exempted by state or federal law or this Code, shall file a registration statement with the department within 90 days of the effective date of this article.

(Ord. No. 2016-002, § I(62-93), 2-15-16)

Section 62-104. Registration procedure.

The registration information provided to the city shall be on a form approved by the city and include, but not be limited to:

(1) The name, legal status (i.e. partnership, corporation, etc.), street address, email address, and telephone and facsimile numbers of the utility filing the registration statement (the "registrant"). If the registrant is not the owner of the facility in the right-of-way, the registration shall include the name, street address, email address if applicable, and telephone and facsimile numbers of the owner;

(2) The name, street address, email address if applicable and telephone and facsimile numbers of one or more facilities representative(s). Current information regarding how to contact the facilities representative(s) in an emergency shall be provided at the time of filing a registration and shall be updated as necessary to assure accurate contact information is available to the city at all times;

(3) A copy, if requested, of the utility's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements.

(4) A copy, if requested, of the service agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the registration.

(Ord. No. 2016-002, § I(62-94), 2-15-16)

Section 62-105. Incomplete registration.

If a registration is incomplete, the director shall notify the registrant and shall provide a reasonable period of time in which to complete the registration. If a registration is complete, the director shall so notify the utility in writing.

(Ord. No. 2016-002, § I(62-95), 2-15-16)

Section 62-106. Acceptance of the registration shall not convey title in the rights-of-way.

Acceptance of the registration is only the nonexclusive, limited right to occupy rights-of-way in the city for the limited purposes stated in the acceptance. Acceptance of the registration does not excuse a utility from obtaining permits required by city ordinances nor from obtaining appropriate access or pole attachment agreements before using the facilities of others, including the city. Acceptance of the registration does not excuse a utility from notifying the city of construction as required herein.

(Ord. No. 2016-002, § I(62-96), 2-15-16)

Section 62-107. Facilities in place without registration.

Beginning one year after the effective registration is required but has not been obtained unless specifically exempted by law, and for which no valid service agreement exists with the city, may be deemed to be a nuisance and an unauthorized use of the rights-of-way. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities, evicting the utility from the right-of-way; prosecuting the violator; and/or any other remedy provided by city ordinance or otherwise allowed in law or in equity.

(Ord. No. 2016-002, § I(62-97), 2-15-16)

Section 62-108. Permit required.

It shall be unlawful for any utility to excavate or to construct, install, maintain, renew, remove or relocate facilities in, on, along, over or under the public roads of the city without a utility permit from the department of planning in accordance with the terms of this chapter.

(Ord. No. 2016-002, § I(62-98), 2-15-16)

Section 62-109. Permit procedure.

Utility permits shall be obtained from the director (or such other person as the city manager may designate) upon application made on forms prescribed by the department of planning. The written application shall include the following:

(1) The name and address of the utility;

(2) The nature, extent, and location of any work proposed to be done, along with satisfactory plans as attachments showing in detail the location of the proposed facility or operations as described in the permit application. The plans shall show the size or capacity of facilities to be installed; their relationship to street features such as right-of-way lines, pavement edge, structures, etc., horizontal and vertical clearance to critical elements of the roadway and any other information necessary to evaluate the impact on the street and its operation;

(3) The name and address of the person or firm who is to do such work;

(4) The name, street address, email address if applicable and telephone and facsimile numbers of one or more facilities representative(s);

(5) The projected dates for the work to be started and finished;

(6) An indemnity bond or other acceptable security in an amount to be set by the city to pay any damages to any part of the city road system or other city property or to any city employee or member of the public caused by activity or work of the utility performed under authority of the permit issued;

(7) A copy, if requested, of the registrant's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements; and

(8) A copy, if requested, of the service agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the application.

(Ord. No. 2016-002, § I(62-99), 2-15-16)

Section 62-110. Permit fees.

Fees shall be determined by the director, subject to the approval by resolution of the city council. A fee schedule shall be available at the offices of the director and the city clerk and open for public inspection.

(Ord. No. 2016-002, § I(62-100), 2-15-16)

Section 62-111. Issuance of permit.

If the director determines the applicant has satisfied the following requirements, the director may issue a permit.

(1) Whether issuing of the approval will be consistent with this chapter; and

(2) Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law, if applicable, in order to construct facilities in the manner proposed by the applicant; and

(3) The impact on safety, visual quality of the streets, traffic flow, and other users of the right-of-way and the difficulty and length of time of the project, construction or maintenance.

(Ord. No. 2016-002, § I(62-101), 2-15-16)

Section 62-112. Emergency situations.

(a) Each utility shall, as soon as reasonably practicable, notify the director of any event regarding its facilities which it considers to be an emergency. The utility may proceed to take whatever actions are necessary in order to respond to the emergency. A utility who engages in an emergency excavation shall take all reasonable precautions to avoid or minimize damage to any existing facilities.

(b) In the event that the city becomes aware of an emergency regarding utility facilities, the city may attempt to contact the affected utility or facilities representative. The city may take whatever action it deems necessary in order to respond to the emergency, including cut or move any of the wires, cables, amplifiers, appliances, or other parts of the facilities. The city shall not incur any liability to the utility, for such emergency actions, and the cost of such shall be paid by each utility affected by the emergency.

(Ord. No. 2016-002, § I(62-102), 2-15-16)

Section 62-113. Effective period of permit.

(a) Each permit shall have a set commencement and expiration date based on information provided in the applicant's permit application.

(b) The permit shall remain in place construction is completed or until its expiration date unless the utility is in default. The director may give written notice of default to a utility if it is determined that a utility has:

(1) Violated any provision or requirement of the issuance or acceptance of a permit application or any law of the city, state, or federal government;

(2) Attempted to evade any provision or requirement of this chapter;

(3) Practiced any fraud or deceit upon the city; or

(4) Made a material misrepresentation or omission of fact in its permit application.

(Ord. No. 2016-002, § I(62-103), 2-15-16)

Section 62-114. Cancellation for cause.

If a utility fails to cure a default within 20 working days after such notice is provided to the utility by the city, then such default shall be a material breach and city may exercise any remedies or rights it has at law or in equity to terminate the permit. If the director decides there is cause or reason to terminate, the following procedure shall be followed:

(1) City shall serve a utility with a written notice of the reason or cause for proposed termination and shall allow a utility a minimum of 15 calendar days to cure its breach.

(2) If the utility fails to cure within 15 calendar days, the city may declare the permit terminated.

(Ord. No. 2016-002, § I(62-104), 2-15-16)

Section 62-115. Expiration of permit.

If work is not begun within six months of the date of issuance, the permit will automatically expire.

(Ord. No. 2016-002, § I(62-105), 2-15-16)

Section 62-116. Utility accommodation manual adopted.

The 2009 Utility Accommodation Policy and Standards manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, except Appendix B (Permit forms and supporting documents), promulgated by the State of Georgia Department of Transportation, as may be amended from time to time is hereby adopted by reference and incorporated in the article as if fully set forth herein, subject to the amendments and modification contained in this chapter. A copy of the manual shall be maintained at the offices of the director or his designee and open for public inspection. Any conflicts between the provisions of this article and the manual shall be resolved in favor of the manual. References to state personnel, agencies, and fees shall be interpreted, where required, as meaning the City of Commerce municipal equivalents.

(Ord. No. 2016-002, § I(62-90), 2-15-16)

Section 62-117. Protection of traffic and roadway.

Unless specifically in the permit, no utility may occupy the city rights-of-way unless sufficient space is available so that the free flow and safety of traffic and other capacity considerations are not unduly impaired and the installation does not prevent the department from reasonably maintaining the streets, structures, traffic control devices and other appurtenant facilities, and further provided that maintenance and operations of the facilities do not jeopardize the traffic, street structure, other users of the right-of-way or the right-of-way itself.

(Ord. No. 2016-002, § I(62-107), 2-15-16)

Section 62-118. Grading.

If the grades or lines of any street within the city right-of-way are changed at any time by the city during the term of the permit and this change involves an area in which the utility's facilities are located, then the utility shall, at its own cost and expense and upon the request of the city upon reasonable notice, protect or promptly alter or relocate the facilities, or any part thereof, so as to conform with such new grades or lines. In the event the utility refuses or neglects to so protect, alter, or relocate all or part of the facilities, the city shall have the right to break through, remove, alter, or relocated all or any part of the facilities without any liability to the utility and the utility shall pay to the city the costs incurred in connection with such breaking through, removal, alteration, or relocation.

(Ord. No. 2016-002, § I(62-108), 2-15-16)

Section 62-119. Installation of poles and other wireholding structures and relocation.

Unless otherwise provided in a valid service agreement, no placement of any pole or wireholding structure of the utility is to be considered a vested interest in the right-of-way, and such poles or structures are to be removed, relocated underground, or modified by the utility at its own expense whenever the city determines that the public convenience would be enhanced thereby. The facilities shall be so located and installed as to cause minimum interference with the rights and convenience of property owners.

(Ord. No. 2016-002, § I(62-109), 2-15-16)

Section 62-120. Locate requests.

As provided in O.C.G.A § 25-9-6 (the Georgia Utility Facility Protection Act) and other applicable state law currently in place or as amended, no utility shall commence, perform, or engage in blasting or in excavating with mechanized excavating facilities unless and until the utility planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the utility protection center, beginning the next working day after such notice is provided, excluding hours during days other than working days.

(Ord. No. 2016-002, § I(62-110), 2-15-16)

Section 62-121. Repairs.

Each utility shall be responsible for the cost of repairing any facilities in the rights-of-way and adjoining property or other facilities which it or its facilities damage.

(Ord. No. 2016-002, § I(62-111), 2-15-16)

Section 62-122. Street repairs.

A utility shall be liable, at its own cost and expense, to replace, restore or repair, any street, facilities or property or structure thereon, thereunder, thereover or adjacent thereto that may become disturbed or damaged as a result of the construction or installation, operation, upgrade, repair or removal of facilities to a condition as good as or better than its condition before the work performed by the utility that caused such disturbance or damage. If the utility does not commence such replacement or repair after 20 working days following written notice from the city, the city or the owner of the affected structure or property may make such replacement or repair and the utility shall pay the reasonable and actual cost of the same.

(Ord. No. 2016-002, § I(62-112), 2-15-16)

Section 62-123. Inspections.

The utility shall make the construction site available to the director and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.

(Ord. No. 2016-002, § I(62-113), 2-15-16)

Section 62-124. Stop work order.

At any time, including the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any law, or which violates the terms and conditions of the permit and/or this chapter or issue an order to correct work which does not conform to the permit and/or applicable standards, conditions or codes.

(Ord. No. 2016-002, § I(62-114), 2-15-16)

Section 62-125. Notice of completion.

When the construction under any permit is completed, the utility shall notify the department.

(Ord. No. 2016-002, § I(62-115), 2-15-16)

Section 62-126. Additional permits required.

The utility shall obtain all construction, building or other permits or approvals as according to city ordinance, state or federal law. In addition, a permittee shall comply with all requirements of laws, shall complete work in a way as to not cause any unnecessary or unauthorized obstructions of sidewalks, streets, waterways or railways, and is responsible for all work done in the rights-of-way regardless of who performs the work. No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in Article II, Section 7 (B) [of the Georgia Constitution].

(Ord. No. 2016-002, § I(62-116), 2-15-16)

Section 62-127. Penalty.

Every utility convicted of a violation of any provision of this chapter shall be punished by a fine not exceeding $1,000.00 per violation. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

(Ord. No. 2016-002, § I(62-117), 2-15-16)

Section 62-128. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Ord. No. 2016-002, § I(62-118), 2-15-16)

Section 62-129. Reservation of regulatory and police powers.

The city by issuing a written approval of registration under this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the Constitution and Laws of the United States, State of Georgia and the City Charter, and under the provisions of the City's Codified Ordinances to regulate the use of the rights-of-way. The utility by applying for and being issued a written permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A utility is deemed to acknowledge that its interests are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws enacted by the city pursuant to such powers. In particular, all utilities shall comply with city zoning and other land use requirements pertaining to the placement and specifications of facilities.

(Ord. No. 2016-002, § I(62-119), 2-15-16)

Section 62-130. Compliance.

No person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of city to enforce compliance.

(Ord. No. 2016-002, § I(62-120), 2-15-16)

Section 62-131. Appeal of administrative decisions.

All appeals provided for by this chapter and any notification to the city required by this chapter shall be in writing and sent via certified mail to the director as specified in this chapter.

(Ord. No. 2016-002, § I(62-121), 2-15-16)

Section 62-132. Section headings.

Section headings are for convenience only and shall not be used to interpret any portion of this article.

(Ord. No. 2016-002, § I(62-122), 2-15-16)

ARTICLE VI. ROAD NAMING AND ADDRESSING

Section 62-200. Title.

This Ordinance shall be known as the Road Name and Addressing Ordinance of the City of Commerce, Georgia.

Section 62-201. Purpose.

These regulations are established to provide a system of unique road names and addresses which are essential for successfully: improving the response time of fire, police, ambulance vehicles and other emergency services; expediting postal and general delivery services; and enhancing the ability to locate a business and/or residences based on their address. This ordinance is adopted to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of Commerce and Jackson County, Georgia.

Section 62-202. Authority.

This Ordinance is enacted pursuant to the authority conferred by Section 46-5-122 of The Official Code of Georgia Annotated, as amended.

Section 62-203. Delegation.

(a) The Jackson County Geographic Information Systems (GIS) Department and the Jackson County Public Development Department are hereby assigned overall authority and responsibility for the naming of public/private roads and addressing as directed by provisions of this Ordinance.

(b) The Jackson County GIS Department will be tasked with the maintenance of addressing data; coordinating with the Public Development Department, designating road or street numbers, the approval of road or street names, and the assignment of road or street names.

(c) The Jackson County Public Development Department will be tasked with coordinating initial applications, code enforcement (shared authority with the city), coordinating with the GIS Department, and assisting public inquiries.

Section 62-204. Applicability.

The provisions set forth herein shall apply to those roads, both public and private (including manufactured/mobile home parks, condominium developments, apartment complexes, malls, shopping plazas, strip buildings, businesses, business or office parks) and addresses which are currently or will be located within the City of Commerce in Jackson County, Georgia.

Section 62-205. Definitions.

For the purpose of this Ordinance, the following terms are defined. Unless specifically defined, words or phrases used in this Ordinance shall be interpreted to have the meaning in common usage and to give this Ordinance the most reasonable application.

Apartment: Unit within a building consisting of two (2) units or more for rent.

Commission: The Jackson County Board of Commissioners (BOC).

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or equipment and requiring a separate power meter to be installed for the building to have electrical service. This will also include mobile homes or manufactured homes. For the purposes of this Ordinance, the term "building" may also include other manmade structures meeting the same requirement as in the first sentence.

Condominium: Ownership of a single unit within a structure that may include common areas and Facilities.

Driveway: A private road, easement, or private right-of-way, giving access from a public road, private road, or private right-of-way, leading to a building. A driveway does not serve more than two (2) lots/buildings that have or require separate power meters to be installed for electrical service. If a driveway is said to serve more than two (2) lots/buildings, it then shall be assigned and designated with a private road name with all properties addressed along such named private Road.

Frontage unit: A frontage unit is a standard interval in feet used to assign consecutive property numbers on a street or road.

GIS: Geographic Information Systems.

GIS addressing coordinator: An employee or other designated official or person charged with the responsibility of assigning addresses and approving road names as defined in this Ordinance. This person shall be designated by the Jackson County GIS Manager and will be an employee of Jackson County GIS Department.

GIS manager: An employee or other designated official or person charged with the responsibility of managing the Jackson County GIS Department.

Honorary road name: A secondary road name designated to an individual person or organization.

House number: The number assigned by the GIS Addressing Coordinator to any building for the purpose of identification of the location.

Mailing address: The address assigned by the GIS Addressing Coordinator and used by the United States Postal Service (USPS) for the purpose of delivery of the United States mail. The property address and mailing address shall be the same for all buildings unless the property owners utilize a post office box for delivery of their mail.

Mobile home: A moveable or transportable dwelling.

Mobile home park: Any site or parcel of land under single ownership where land or units are rented, and community utility(ies) provide for the occupancy of mobile homes.

Official road name: The name as designated in the complete list of all roads in Jackson County and on file with the Jackson County GIS Department.

Private road: Any road, which is not maintained by GDOT and/or Jackson County or it's municipalities through the use of public funds, or is not a driveway as defined by this Ordinance.

Public road: Any road which is maintained by Jackson County, a Jackson County municipality and/or by Georgia Department of Transportation.

Road: A public or private one-way or two-way road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with cul-de-sacs and dead-end roads. This definition includes secondary roads, but does not include driveways. For purposes of this ordinance, road and street shall have the same meaning.

Road sign: A metal blade and necessary hardware used to convey a road name, block range and, where applicable, the state road number.

Unit designator: The portion of the mailing address used to distinguish individual units within the same structure.

Section 62-206. Abbreviations.

For the purpose of this Ordinance, the following abbreviations are defined.

E 9-1-1: Emergency 9-1-1; a system used that links emergency callers with the appropriate public services.

ESRI: Environmental Systems Research Institute; a global company that provides the means for organizing and analyzing geographical information to help land planners and resource managers make well-informed environmental decisions.

FGDC: Federal Geographic Data Committee; a U.S. committee that coordinates the development of the National Spatial Data Infrastructure.

FHWA: Federal Highway Administration; agency in the U.S. Department of Transportation that supports states and local governments in the design, construction and maintenance of the Nation's highway system.

GDOT: Georgia Department of Transportation.

GISOP: The Jackson County GIS Department Operating Procedures Technical Guide. The document used as a guideline by the GIS Addressing Coordinator and GIS Department that will have the authority to authorize and approve alternate methods of displaying road naming and addressing which meet the intent of this Ordinance. This document may be changed periodically at the discretion of GIS Department.

MRAD: Master Road and Address Database

MUTCD: Manual on Uniform Traffic Control Devices; standard for signs, signals and pavement markings in the United States. MUTCD is published by the FHW A.

NENA: National Emergency Numbering Association; professional organization that promotes the implementation and awareness of 9-1-1 and the international three-digit emergency communication systems.

USPS: United States Postal Service.

(Ord. No. 2020-005, § I(62-200), 3-16-20)

Section 62-207 - 62-210. Reserved.

Section 62-211. Consideration of new or proposed road names.

The naming of roads, particularly in new subdivisions, shall be reviewed and approved by the Jackson County GIS Department and the Jackson County Public Development Department per the selection standards provided in this article. Persons submitting road names that are rejected shall be notified so that changes may be made prior to the plan review process.

Section 62-212. Selection standards.

In addition to those outlined in the GISOP, the following standards will be used in consideration of new or proposed road names. All current roads that would otherwise not meet these standards will be granted exceptions and maintain those names until changes, if considered, can be made to conform to this Ordinance.

(a) Names of new roads or proposed changes must not duplicate, in wording, in sound or pronunciation, an existing road within Jackson County regardless of distance between occurrences or in address ranges/block numbers. For communities that cross county boundaries the road names should not duplicate any other road name within the incorporated boundaries of that municipality or the same zip code community name even if it crosses into another adjoining county.

(b) Road names may not contain abbreviations of words, names or initials.

(c) Numerical references are prohibited, such as Fifth, Ten.

(d) Names of individuals will only be permitted for honorary purposes unless the individual holds a state, national or local significance.

(e) Single alphabetical characters are prohibited.

(f) Road names must be easy to pronounce and easily recognizable in emergency situations.

(g) Special characters will not be permitted; periods, dashes, apostrophes, hyphens, etc.

(h) Names that may be offensive (slang, words with double-meanings) will not be allowed.

(i) Road names will be continuous throughout their entire length, when feasible.

G) Names which have homonyms (i.e., other words pronounced similarly but spelled differently) should not be used on any street and certainly not on multiple streets even if the street type is different (e.g., Steven Lane / Stephen Lane; Disk Drive / Disc Lane).

Section 62-213. Prefixes and suffixes.

Directional prefixes and suffixes will be used only when necessary. If used, cardinal (north, south, east and west) directions will only be used as prefixes and ordinal (northwest, northeast, southwest, and southeast) directions will only be used as suffixes, in accordance to established baselines as outlined in the GISOP. The use of both a prefix and suffix for addresses and road names will not be permitted.

Section 62-214. Road types.

(a) Each approved road name will be required to have a road type. There shall only be one road type per road name. Road types permitted for use in Jackson County will be in compliance with the standards of the USPS Publication 28.

(b) Both the Jackson County GIS Department and the Jackson County Public Development Department have the authority to determine which road type(s) shall be suitable for the new or proposed name, as outlined in the GISOP.

(c) If the requested type is deemed inappropriate by the Jackson County Public Development Department, a new one must be chosen.

Section 62-215. Reserving road names.

(a) A request for road name reservation can be presented to the Jackson County Public Development Department for any new planned development. These road names will be reviewed and reserved in the road name inventory, if approved.

(b) Road names may only be reserved for two (2) years. Upon reaching the two-year mark from date of reservation, the names will no longer be reserved, should a written extension request not be made. A new request for an additional one (1) year extension of the road name(s) reservation must be submitted to the Jackson County Public Development Department.

Section 62-216. Approvals.

All proposed road names shall be reviewed and approved by the Jackson County GIS Department and the Jackson County Public Development Department during the site or development plan review period. The appropriate Jackson County GIS Layers shall be amended by the Jackson County GIS Department to reflect all newly approved road names.

Section 62-217. Change to approved road names.

Roads name changes shall be authorized only by action of the City Council of Commerce.

Section 62-218. Road naming or road name change by petition.

Whenever a change to an approved and addressed road name is requested by a property owner or developer with access to the subject road, the following procedures shall apply.

(a) A complete application shall be made with the Jackson County Department of Public Development which shall be accompanied by a petition signed by 66% (two-thirds) or more of the property owners adjoining the said road in agreement (An affected property owner is one who owns an interest in property contiguous to the street). A non-refundable

application fee of $250 must be submitted to the Jackson County Public Development Department prior to processing; provided, however, applications initiated by city or county staff will have no fees associated with them.

(b) Within 30 days of submittal the department will determine the percentage of the affected property owners that has signed the petition. If less than 66% of the affected property owners have signed the petition, it will not be processed and will be returned to the

applicant. If 66% or more have signed, the department will review the proposed road name for compliance with the requirements of this article.

(c) If the proposed road name meets all criteria provided in the GISOP, the proposed road name will be placed on a "reserve list" in the road book. A letter will then be sent by the Jackson County GIS department to affected county departments for review and comments. If the requested name change receives any unfavorable comments, the Jackson County GIS Department will schedule a meeting with affected departments and agencies to develop recommendations as to the beginning and ending points of said change (if necessary), or name change, or any road number changes that may be Applicable.

(d) After review and acceptance by the county departments of the request, and if 66% or more of the affected property owners have signed a petition, then the proposal will be placed on the agenda of the Commerce City Council. If all of the affected property owners do not agree to the requested road name change, or if less than 100% have signed the petition, then an advertised public hearing before the Commerce City Council will be scheduled and held. Note, however, that at least 66% of the affected property owners must sign the petition for it to be accepted for processing.

(e) A notice advertising the name change shall be required to be published in a newspaper of general circulation in the city and county at least (15) days, but not more than forty-five (45) days, before the public hearing.

(f) If, after public hearing, the name change is approved by the Commerce City Council, then the county departments will make changes as necessary and again notify affected property owners and public agencies in writing at least (I 0) days before the change becomes effective.

(g) The applicant for road name change that has been approved shall be responsible for revising any final plats and paying any associated fees. The applicant shall also be responsible for the cost of new road name signs that will replace existing road name Signs.

Section 62-219. Honorary designations.

Honorary designations are discouraged but can be initiated by the Commerce City Council.

Section 62-220. Renaming existing roads for emergency purposes.

Road names (public or private) may be changed by the Jackson County GIS Department as necessary for health, safety and welfare reasons and efficiency of the emergency response system. Owners of adjoining properties shall be notified in writing that the change is taking place and provided a list of proposed road names from which input shall be considered. A selection will be chosen after receiving input and be presented to the Commerce City Council for approval. For any case in which a continuous road has multiple names, the Jackson County GIS Department will determine the correct name and notify owners along such road of the name change. In the event of a conflict in either road naming or addressing, the Jackson County GIS Department will use its best judgment to resolve the conflict and have the responsibility of notifying the owner, E 9-1-1, USPS, and other agencies.

Section 62-221. Temporary road names.
Temporary road names for events or special occasions will not be permitted.

Section 62-222. Road name signage.
Sign location and installation shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), published by the Federal Highway Administration (FHWA) under 23 Code of Federal Regulations (CFR), Part 655, Subpart F. Road signs will contain the prefix (if used), road name, road type, suffix (if used) and block numbers. Private roads will be marked as such in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

Section 62-223. Official road name database / road book.
Road names that are assigned to roads shall be kept in a "road book" and have the road characteristics for each road centerline of the master road dataset. The Jackson County GIS Department shall make this information available via internet (for public use) and intranet (for internal use). The Jackson County GIS Department may designate other departments and/or personnel to maintain information as it is deemed practical, and shall provide means for the designated personnel to update the road book accordingly.

Section 62-224 - 62-230. Reserved.

Section 62-231. Addressing applicability.
Addresses will be assigned on all roads and shall have a road sign placed on the main road or Highway.

Section 62-232. Property legal descriptions.
The adoption and implementation of this Ordinance shall not affect the legal descriptions of any property or be used to determine legal descriptions.

Section 62-233. Ordering of addressing components.
Components of a property address shall always be in the following order: address number, address number suffix (if used prior to ordinance), directional prefix (if any), road name, road type, directional suffix (if any), unit type designation (if applicable), and a unit number (if applicable).

Section 62-234. Assignment and standards.
Addresses shall be determined based on the distance from the intersection of the driveway with the road and the current surrounding addresses, if compliant with this Ordinance. Additional standards used to determine addresses are as provided in the GISOP.

(a) Multiple structures sharing driveway. If more than two (2) addressable structures access a common driveway as defined, that driveway will be assigned a private road name and all addresses will be assigned along such private road.

(b) Comer and multiple fronting parcels. Corner or double fronting parcels shall be assigned an address based on the driveway location of the intersecting road. If that entrance is not visible from that road or is inaccessible for emergency services, then the address shall be based on the road which the structure faces.

(c) Duplex/attached structures. Each unit of structure shall receive its own individual address as determined by the Jackson County GIS Department. This would include townhouses and condominiums.

(d) Multiple unit structures. Separate internal units within, or associated with, residential or commercial complexes shall have an individual address and be uniquely identified by the use of a unit type. All educational, medical, residential, industrial facilities, and/or any other type of property with private roads that is sold shall not be allowed to change addressing or road names without written approval of the Jackson County GIS Department. If road names or addresses are changed without approval, the property owner will be subject to penalties as provided for in this chapter.

(e) Vacant parcels. Vacant parcels less than one acre may be pre-addressed at the discretion of the Jackson County GIS Department. This pre-address shall be assigned to the center point of the parcel frontage. All other parcels will not carry an address until placement of a structure.

(f) Miscellaneous structures. Structures requiring an address for metering or permitting purposes shall be given their own individual address and a unit designator. "These structures may include billboards/signs, power poles, utility assets and others.

(g) Mobile/manufactured home parks. Mobile home lots shall have sequential address numbers throughout the mobile home park. Each lot will have a separate address number

assigned. The address number of each lot must be clearly displayed on the mobile home which is located on that lot and must be clearly visible from the road. If the lot is more than 50 feet from the road, the address number shall be displayed at the end of the road or easement giving access to that mobile home. Addresses are not transferrable with the mobile home.

(h) Wireless towers. Wireless towers shall be assigned one address to the tower owner. Should the tower have multiple carriers, each carrier will be assigned a suite number that will include the address of the tower owner. A sign or post which clearly indicated the address number assigned to the tower shall be located at the entry point of the road on which the tower is located.

Section 62-235. Numbering system.

The Jackson County GIS Department shall develop and maintain a· uniform scaled system of numbering addresses. This addressing system shall be used in designating addresses for new and existing structures and to resolve address problems which tend to confuse the traveling public or tend to delay the response of emergency services, mail delivery and other service providers. Baselines and the point of origin shall be defined in the GISOP to include the numbering structure for Jackson County. Addressing shall conform to the GISOP, however; the Jackson County GIS Department reserves the right to amend as needed.

Section 62-236. Specifications and placement of address numbers.

(a) All structure numbers shall be constructed of a durable, weather resistant material. The color shall contrast with the color scheme of the structure, and if mounted on glass, shall contrast with the background and be clearly visible. Reflective numbers for nighttime

identification are required, if not in a well-lit area.

(b) In accordance with Section 505 of the 2012 International Fire Code and the city's property maintenance code, address numbers for both residential and commercial buildings shall not be less than four (4) inches in height. Unit designators for these facilities shall not be less than four (4) inches. In all cases, a number larger than the minimum size may be required where the minimum size does not provide adequate identification from the traveled roadway or is proportional to the building size. All numerical identifications must be easily identifiable without obstruction of view. Any dwelling or individual business located at more than 50 feet from the roadway and/or not clearly visible shall be required to have numerical posting at both the entrance or driveway and located in close proximity to the front door or entrance way.

Section 62-237. Responsibility for placement of address numbers.

It shall be the responsibility of each and every property owner, trustee, lessee, agent and occupant of each residence, apartment building, business or industry to post and maintain, at all times, address numbers as required under this Ordinance. All addresses shall be displayed in such a way that they are unobstructed and legible from the traveled roadway.

(a) New addresses. The owner, occupant, or agent of each house, building or other structure assigned an address under the uniform numbering system shall place or cause to be placed the number on the house, building, or other structure within thirty (30) days after receiving notification from the Jackson County GIS Department and or the Jackson County Public Development Department of the proper number assignment or within thirty (30) days of occupancy, whichever is sooner.

(b) Existing addresses. The owner, occupant or agent of any existing house, building or other structure existing as of the date of the adoption of this Ordinance, shall place or cause to be placed the number on the house, building or other structure within sixty (60) days after the adoption of this Ordinance.

Section 62-238. Changes of addresses.

(a) If an address number is changed for any reason, the Jackson County GIS Department shall be responsible for assigning the new address number. Requests for address reassignment should be made to the Jackson County Public Development Department. An application fee for reassignment shall be required prior to processing. Application fees are subject to change at the discretion of the Jackson County Public Development Department as outlined in the schedule of fees. The form shall be available online on the Jackson County website and at the Jackson County Public Development Department office. The Jackson County GIS Department has the authority to change addresses as necessary to ensure conformity throughout Jackson County and efficiency of the emergency response system.

(b) Requests will be reviewed within five (5) business days for consideration and approval, but may be extended should further consideration be needed. When such a change is made, the Jackson County Public Development Department shall notify the building owner, the property owner, the Jackson County Road Department, all USPS, Jackson County offices, and emergency services.

(c) The owner of the building shall post the changed address numbers within thirty (30) days

of receipt of such notice. The owner/resident of the building will be responsible for notifying all suppliers and others of the address change.

Section 62-239 and 62-240. Reserved.

Section 62-241. Compliance.

(a) No owner of real property shall attempt to number or fail to number the property or the principal building, if not in conformity with this Ordinance. Either the Jackson County Public Development Department or the City Manager shall be authorized to send a written notice to any owner not in compliance with this Ordinance, to the owner's address as stated in Jackson County records, directing specific compliance with a provision of this Ordinance.

(b) If corrective measures have not been taken within thirty (30) days of the notification of violation, a person or business will be subject to penalties provided in Section 62-147 of this Article.

(c) Jackson County and the City of Jefferson will not assume any responsibility for the inability of emergency services (i.e. sheriff, fire, 911 departments) to locate the property in the event of an emergency due to incorrect property identification.

Section 62-242. Development plan requirements.

All land subdivisions that create a new public or private road or road section in any jurisdiction within the City of Commerce must have a pre-approved list of road names and addresses from the Jackson County GIS Department or the Jackson County Public Development Department before submitting subdivision and development plans to the city department with jurisdiction. All multi-unit and multi-structure developments must submit the site plan with building layout, for unit numbering, to the Jackson County Public Development Department prior to occupancy. Any subdivision or site that requires new addresses will be reviewed within seven (7) business days for assignment and subject to the final development/site plan approval before release.

Section 62-243. Business occupation taxes.

All businesses, new or existing must have their address properly displayed in accordance to this Ordinance or a penalty will be assessed. All new businesses must have their address verified/ confirmed against the master road and address database before an occupational tax certificate will be issued.

Section 62-244. Building permits.

No permit shall be issued for any structure until the owner/developer/contractor obtains an official address assigned by the Jackson County GIS Department.

Section 62-245. Certificate of occupancy.

A certificate of occupancy (CO) for any structure erected, repaired, or modified shall be withheld until the assigned address is posted on the structure as required by this article.

Section 62-246. Enforcement responsibilities.

This ordinance may be enforced by the Jackson County Public Development Department as well

as the city of Commerce. The Code Enforcement division or any designee(s) of the Jackson County Public Development Department or the City shall have the responsibility for enforcing this Ordinance and issuing citations for violations.

Section 62-247. Penalties for violation.

Any person, business or property owner that violates or fails to comply with the provisions of this Ordinance shall be guilty of an infraction punishable by a fine not to exceed $1,000.00 but in no event to be less than $300.00. Each day any violation with the provisions of the Ordinance shall continue as a separate offense. In the event that violations of this Ordinance are not corrected within thirty (30) days of receiving the fine, Jackson County or the City of Commerce may perform the work needed to comply and bill the property owner(s). If the bill for work performed is not paid within ninety (90) days of mailing, then a lien may be put on the property to include the cost of the work and any applicable court costs.

Section 62-248. Appeals.

Any owner or occupant can submit an informal appeal of an administrative decision made pursuant to this Chapter in writing to the Director of Public Development or to the GIS Manager of the GIS Addressing Coordinator. Road naming and/or addressing decisions will be made within ten (10) days of the notification date. The GIS Manager shall review within reasonable time to determine if he/she will affirm, modify, or revoke the decision of the GIS Addressing Coordinator. If the appellant still finds the decision unsatisfactory, he/she may within fifteen (15) days of the notification date submit a formal appeal to the Jefferson City Council. The notice of appeal shall include the application, and the appellant shall submit any applicable fees for filing an appeal application. The City Council shall make its final decision on the appeal, in conformity with this chapter, and it shall be final and conclusive. In the absence of an appeal within the designated timeframes, the decisions of the GIS Addressing Coordinator or GIS Manager shall be final.

Section 62-249. Liability.

Jackson County and the City of Commerce, its officials, officers, agents or employees, together with any person following their instructions in rendering services, shall not be liable for civil damages as a result of an act or omission under this Ordinance, including but not limited to, developing, adopting, operating, or implementing an addressing system or plan.

Chapter 66 SUBDIVISIONS[42]

Section 66-1. Adoption of subdivision regulations.

The ordinance entitled, Land Subdivision Regulations of Commerce, Georgia, adopted in 1983, is hereby incorporated by reference into this Code. Such ordinance shall be on file for public inspection in the office of the city clerk.

(Code 1987, § 21-201)

[42]Cross reference(s)—Solid waste, ch. 58; streets, sidewalks and other public places, ch. 62; utilities, ch. 78; zoning, app. A.

Chapter 70 TAXATION[43]

ARTICLE I. IN GENERAL

Section 70-1—70-25. Reserved.

ARTICLE II. AD VALOREM TAXES[44]

Section 70-26. Rate of levy.

All property, real and personal, subject to municipal ad valorem taxation shall be assessed by the county in the manner prescribed in O.C.G.A. § 48-5-350. The tax millage shall be established by resolution each year by city council.

(Code 1987, § 4-101(1))

Section 70-27. Enforcement.

The ad valorem taxes so assessed may be collected by any means allowed by state law, including those set out in O.C.G.A. § 48-2-55 and also including those set out in O.C.G.A. § 48-4-75, et seq.

(Code 1987, § 4-101(2); Ord. No. 95-10, 10-9-95)

Section 70-28. Due date.

All ad valorem taxes due to the city shall be paid by or on 60 days from the postmark on notice of taxes mailed out to the taxpayer.

(Code 1987, § 4-101(3); Ord. No. 94-004, 3-14-94)

Section 70-29. Interest on unpaid taxes; penalties.

Ad valorem taxes due the city and remaining unpaid 60 days from the date of the postmark of the tax notice to the taxpayers shall bear interest at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H.15 or any publication that may supersede it, plus three percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H.15 on or after January 1 of each calendar year. For the purposes of

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[43]Cross reference(s)—Administration, ch. 2; alcoholic beverages, ch. 6; businesses, ch. 18; utilities, ch. 78.

State law reference(s)—Taxation power of municipal governments, Ga. Const. art. 9, Section 4, par. 1; limitation on taxing power of municipalities, Ga. Const., art. 9, Section 2, par. 8; ad valorem taxation of property, O.C.G.A. § 48-5-2; municipal taxation, O.C.G.A. § 48-5-350 et seq.; specific business and occupation taxes, O.C.G.A. § 48-13-1 et seq.

[44]State law reference(s)—Municipal ad valorem taxation, O.C.G.A. § 48-5-350 et seq.

this Code section, any period of less than one month shall be considered to be one month. In addition, the penalties provided by O.C.G.A. § 48-2-44 shall be collected.

(Ord. No. 94-004, 3-14-94; Ord. No. 2016-004, 7-18-16)

Section 70-30—70-50. Reserved.

ARTICLE III. INSURERS' GROSS DIRECT PREMIUMS TAX AND LICENSE FEES[45]

Section 70-51. Insurers license fees.

There is hereby levied for the year 1995 and for each year thereafter an annual license fee upon each insurer doing business with the City of Commerce, Georgia in the amount of $40.00. For each separate business location in excess of one not covered by section 70-52, which is operating on behalf of such insurers within the City of Commerce, Georgia, there is hereby levied a license fee in the amount of $40.00. For the purpose of this article, the term "insurer" means a company which is authorized to transact business in any of the classes of insurance designated in O.C.G.A. § 33-3-5.

(Ord. No. 94-10, § 1, 11-14-94)

Section 70-52. License fees for insurers insuring certain risks at additional business locations.

For each separate business location, not otherwise subject to a license fee hereunder, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and in connection with such loans or sales offers, solicits or takes application for insurance through a licensed agent of an insurer for insurance said insurer shall pay an additional license fee of $14.00 per location for the year 1995 and for each year thereafter.

(Ord. No. 94-10, § 2, 11-14-94)

Section 70-53. Insurers agency license fees; independent insurance agencies, brokers, etc., not otherwise licensed.

There is hereby levied for the year 1995 and for each year thereafter an annual license fee upon independent agencies and brokers for each separate business location from which an insurance business is conducted and which is not subject to the company license fee imposed by section 70-51 hereof in the amount of $50.00 for each such location within the City of Commerce.

(Ord. No. 94-10, § 3, 11-14-94)

Section 70-54. Gross premium tax imposed on life insurers.

There is hereby levied for the year 1995 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the State of Georgia in an amount equal to one percent of the gross direct premiums received during the preceding calendar year in

[45]Editor's note(s)—Ord. No. 94-10, adopted Nov. 14, 1994, amended former Art. III, §§ 70-51—70-58, relative to insurers' gross direct premiums tax and license fees, in its entirety to read as herein set out. The provisions of former Art. III derived from Code 1987, § 4-104(1), (2) and § 18-207(1)—(4), (6), (7). The provisions of said Ord. No. 94-10 included herein have been designated at the discretion of the editor as §§ 70-51—70-60.

accordance with O.C.G.A. § 33-8-8-1. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 70-51.

(Ord. No. 94-10, § 4, 11-14-94)

Section 70-55. Gross premiums tax; all other insurers.

There is hereby levied for the calendar year 1995 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer, other than an insurer transacting business in the class of insurance designated in subsection 1 of O.C.G.A. § 33-3-5, doing business within the State of Georgia in an amount equal to two and one-half percent (2.5%) of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8-2. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 70-51.

(Ord. No. 94-10, § 5, 11-14-94)

Section 70-56. Due date for license fees.

License fees imposed in sections 70-51 and 70-52 shall be due and payable on the first day of 1995 and on the first date of each subsequent year.

(Ord. No. 94-10, § 6, 11-14-94)

Section 70-57. Administrative provisions.

The city clerk is hereby directed to forward a duly certified copy of this article [Ordinance No. 94-10] to the Insurance Commissioner of the State of Georgia within 45 days of its enactment.

(Ord. No. 94-10, § 7, 11-14-94)

Section 70-58. Effective date.

This article [Ordinance No. 94-10] shall become effective January 1, 1995.

(Ord. No. 94-10, § 8, 11-14-94)

Section 70-59. Severability.

In the event any portion of this article shall be declared or adjudged invalid or unconstitutional, it is the intention of the city council of the City of Commerce, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this article 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 article.

(Ord. No. 94-10, § 9, 11-14-94)

Section 70-60. Repealer.

All ordinances and parts of ordinances in conflict with this article [Ordinance No. 94-10] are hereby repealed.

(Ord. No. 94-10, § 10, 11-14-94)

Section 70-61—70-80. Reserved.

ARTICLE IV. PUBLIC UTILITIES FRANCHISE TAX

Section 70-81. Power companies.

(a) *Rate of levy.* There is hereby set and levied on the Georgia Power Company a public utility franchise tax of four percent of its annual gross revenue received from residential, commercial, and industrial customers within the city.

(b) *Due date.* The due date for the payment of the public utility franchise tax levied on the Georgia Power Company shall be March 1 of each calendar year. Such tax shall be deemed delinquent if not paid within 60 days from the due date thereof.

(Code 1987, § 4-105(1), (2))

Section 70-82. Reserved.

Editor's note(s)—Ord. No. 2009-009, § 1, adopted Nov. 9, 2009, deleted § 70-82. Former § 70-82 pertained to telephone companies and derived from Code 1987, § 4-105(3).

Section 70-82.1. Due compensation for telephone companies that maintain and operate lines and facilities occupying municipal streets and rights-of-way and serve end user retail customers within the city.

(a) The city hereby requires due compensation of three percent of actual recurring local service revenues, as defined in O.C.G.A. § 46-5-1(b)(8) and (9); provided, however, that any company which pays in excess of three percent of actual recurring local service revenues pursuant to an existing franchise agreement shall continue to pay in accordance with the agreement until the expiration of the franchise agreement or December 31, 2012, whichever occurs first, and any company which pays in excess of three percent of actual recurring local service revenues in accordance with an occupational license tax arrangement shall continue to pay in accordance with such payment schedule until December 31, 2012.

(b) Regarding any telephone company that maintain and operate lines and facilities occupying municipal streets and rights-of-way and does not have retail, end user customers located within the city's municipal boundaries, the payment by such company to a municipal authority in accordance with the rates set by regulations promulgated by the department of transportation for the use of its rights-of-way shall be considered the payment of due compensation.

(Ord. No. 2009-009, § 1, 11-9-09)

Section 70-82.2. Authorized designee.

The city manager or his or her designee shall, on behalf of the city, exercise day-to-day administrative duties necessary to fulfill the regulatory authority of the city under O.C.G.A. § 46-5-1 et seq. and shall perform the following duties:

(1) Review application information submitted by a telephone company to the city and, if an application is incomplete, notify the telegraph or telephone company within 15 business days of the receipt of such application, identifying in such notice all application deficiencies.

(2) Report the receipt of a completed application to the council within 60 calendar days of the receipt of such completed application.

(3) Review payments of due compensation submitted by the company to ensure compliance with the provisions of the amended law and this article.

(4) Provide a coordination function between a telephone company and all city departments on any matter relating to the amended law and this article.

(5) Arrange and evaluate, no more than once a year, a comprehensive review of the records of a company which is reasonably related to the calculation and payment of due compensation.

(6) Provide to all telegraph and telephone companies located in its rights-of-way written notice of annexations and changes in municipal corporate boundaries.

(Ord. No. 2009-009, § 2, 11-9-09)

Section 70-83. Cable television companies.

Each cable television company operating in the city shall pay a tax in the amount of three percent of gross of all cable service revenues, including but not limited to subscriber revenues, advertising, pay cable, and leased channel revenues of the company derived from cable television operations within the city limits. If the Federal Communications Commission regulations controlling franchise fees are deleted, or the permissible franchise fee provided in FCC regulations is raised, the franchise fee percentage provided in this section shall be increased to four percent effective 30 days from the effective date of such deletion or amendment with such fee to be increased to five percent effective one year from the effective date of deletion or amendment. Such tax shall be levied monthly and paid to the city no later than the 15th of each month following the receipt of the revenues. The city council shall have the right to inspect the records of the company at any reasonable time for the purpose of ascertaining what the actual gross receipts of the company may have been for cable television service for past years and/or for the present year.

(Code 1987, § 4-105(4))

Section 70-84. Franchise fee for state issued calbe or video franchise.

The city hereby requires a franchise fee of five percent of gross revenues generated within the city for any cable or video state franchise issued in its corporate boundarises by the State of Georgia.

(Ord. No. 2007-12, 12-10-07)

Section 70-85. Authorized designee.

The city hereby authorizes the city manager or his designee, upon receipt of notice to the city of its right to designate a franchise fee for an applicant for or holder of an existing state franchise, to provide written notice to the sectretary of state and each applicant for or holder of a state franchise within a service area that is wholly or partially located within the city limits of the five percent franchise fee rate applicable to such applicant or holder of a state franchise.

(Ord. No. 2007-12, 12-10-07)

Section 70-86—70-105. Reserved.

ARTICLE V. FINANCIAL INSTITUTIONS BUSINESS LICENSE TAX[46]

Section 70-106. Levied.

Pursuant to O.C.G.A. § 48-6-93, there is hereby levied an annual business license tax upon state and national banking associations, federal savings and loan associations and state building and loan associations and any other depository financial institutions as defined in O.C.G.A. § 48-6-93, located within the city at the rate of 0.25 percent of the gross receipts of such institutions. Gross receipts shall mean gross receipts as defined in O.C.G.A. § 48-6-93.

(Code 1987, § 18-206(1))

Section 70-107. Minimum tax.

Notwithstanding any other provisions of this article, the minimum amount of business license tax due from any depository financial institution pursuant to this article shall be $1,000.00 per year.

(Code 1987, § 18-206(2))

Section 70-108. Filing of return.

Each depository financial institution within the city shall file a return of its gross receipts with the city clerk on March 1 of the year following the year in which such gross receipts were measured. Such returns shall be in the manner and in the form prescribed by the commissioner of the department of banking and shall be based upon the allocation method set forth in O.C.G.A. § 48-6-93(d). The tax levied pursuant to this article shall be assessed and collected based upon the information provided in such return.

(Code 1987, § 18-206(3))

Section 70-109. Due date.

The due date of taxes levied by this article shall be by April 1 of each year.

(Code 1987, § 18-206(4))

Section 70-110—70-119. Reserved.

ARTICLE VI. SPECIAL DISTRICT TAX FOR CENTRAL BUSINESS DISTRICT

[46]State law reference(s)—Authorization to levy and collect a business license tax from depository financial institutions, O.C.G.A. § 48-6-93.

Section 70-120. Created.

There is hereby created within the City of Commerce, Georgia, a special tax district which shall be known as the central business district of said city, and which shall be composed of all that territory embraced within the central business district as defined by the zoning ordinance for the city and as delineated on the official zoning map for the city.

(Ord. No. 97-01, § 2, 1-13-97)

Section 70-121. Levied.

The City of Commerce, Georgia shall be authorized to levy upon real estate subject to taxation by the city within the central business district of said city a street assessment not to exceed $15.00 per linear foot of street frontage for a period of time not to exceed three years on all such property. The assessments levied by the city shall be established annually and shall be based on the cost of streetscape improvements undertaken on parcels within the district. The assessments levied by the city pursuant to this article shall be due and payable within 90 days of the notice of assessment being sent by the city. There shall be a penalty of ten percent of the assessment if not paid within said 90 days. The assessments may also be prepaid at any time without penalty by the property owner. Delinquent assessments shall bear the same interest and as ad valorem taxes for the city.

(Ord. No. 97-01, § 3, 1-13-97)

Section 70-122. Funds.

All funds raised pursuant to this special tax district created herein shall be used for street and sidewalk improvements undertaken by the city and the Commerce Downtown Development Authority, including construction, maintenance, landscaping or improvements of streets, curbs, sidewalks, street lights, devices to control the flow of traffic, steps, ramps, and other such street and sidewalk improvements commonly known as streetscape improvements.

(Ord. No. 97-01, § 4, 1-13-97)

Section 70-123—70-129. Reserved.

ARTICLE VII. HOTEL AND MOTEL TAX

Section 70-130. 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:

Due date means from the twentieth day after the close of the monthly period for which the hereunder tax is to be computed.

Guest room means a room occupied, or intended, arranged or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.

Hotel means any structure or any portion of a structure, including any lodging house, rooming house, dormitory, turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, inn, public club or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether

rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, nursing home, retirement home, asylum, sanitarium, orphanage, prison, detention or other buildings in which human beings are housed and detained under legal restraint.

Monthly period means the calendar months of any year.

Occupancy means the use or possession, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

Occupant means any person who, for a consideration, uses, possesses, or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a hotel in the city, including, but not limited to, the owner or proprietor of the premises, lessee, sublessee, lender in possession, licensee or any other person otherwise operating the hotel.

Permanent resident means any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for at least 30 consecutive days next preceding the date.

Person means an individual, firm, partnership, joint association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, the plural as well as the singular number, except the United States of America, the state, and any political subdivision of either thereof upon which the city is without power to impose the tax provided in this article.

Rent means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupancy, without any deduction there from whatsoever.

Return means any return filed or required to be filed as provided by this article.

Tax means the tax imposed by this article.

(Ord. No. 2009-007, 5-11-09)

Section 70-131. Findings; distribution.

(a) The city hereby finds, determines and declares that:

(1) The encouragement, development, growth and expansion of tourism and conventions within the city are important to the economy of the city and to the general welfare of its citizens;

(2) The city should be a tourism and convention center of the state and should have the financial ability to attract and promote tourism and conventions, and to provide the necessary public facilities to compete in the domestic and international travel and convention markets; and

(3) The city believes the tourism and convention industry should pay for the delivery of the services and facilities requested by them to promote and attract visitors and convention delegates.

(b) In accordance with the findings enumerated in subsection (a), it is hereby declared that in each fiscal year, the amount of tax collected under this article shall be used in accordance with O.C.G.A. § 48-13-51(a)(3).

(Ord. No. 2009-007, 5-11-09)

Section 70-132. Imposition and rate of tax.

There is hereby levied and there shall be paid a tax of five per cent of the rent for every occupancy of a guest room in a hotel in the city. The tax imposed by this section shall be paid upon any occupancy on and after January 1, 2009, although the occupancy is had pursuant to a contract, lease or other arrangement made prior to that date.

(Ord. No. 2009-007, 5-11-09)

Section 70-133. Collection of tax by operator.

Every operator maintaining a hotel in this city and renting guest rooms in this city, not exempted under section 70-134, shall collect the tax from the occupant.

(Ord. No. 2009-007, 5-11-09)

Section 70-134. Exemptions.

No tax shall be imposed hereunder upon a permanent resident of a hotel room after the first 30 days of continuous occupancy. No tax shall be imposed on any hotel, which has less than five guest rooms. No tax shall be imposed on any occupant who certifies that they are staying in a hotel as the result of the destruction of their residence or home by fire or other casualty. No tax shall be imposed upon any Georgia state or local government official or employee when traveling on official business.

(Ord. No. 2009-007, 5-11-09)

Section 70-135. Registration of operator; form and contents; execution; certificates of authority.

Every person engaging or about to engage in business as an operator of a hotel in this city shall immediately register with the city clerk on a form provided by the clerk. Persons engaged in such business shall register not later than 30 days after the effective date of the article from which this section derives [January 1, 2009]. The privilege of registration after the imposition of the tax shall not relieve any person from the obligation of payment or collection of tax, on and after the date of imposition thereof, regardless of registration. The registration shall set forth the name under which the person transacts business or intends to transact business, the location of the place or places of business and any other information, which would facilitate the collection of the tax as the city clerk may require. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in the case of ownership by a corporation, by an officer thereof. The city clerk shall, after registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

(Ord. No. 2009-007, 5-11-09)

Section 70-136. Due date of taxes.

Taxes hereunder shall be due and payable to the city monthly on or before the 20th day of every month next succeeding each respective monthly period.

(Ord. No. 2009-007, 5-11-09)

Section 70-137. Information on return.

On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the city clerk showing the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the related period, and such other information as may be required by the city clerk.

(Ord. No. 2009-007, 5-11-09)

Section 70-138. Operator's deduction.

Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and payment of the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions under the provisions of O.C.G.A. § 48-13-52.

(Ord. No. 2009-007, 5-11-09)

Section 70-139. Deficiency determinations.

(a) *Recomputation of tax.* If the city clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any person, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.

(b) *Interest on deficiency.* The amount of the determination shall bear interest at the rate of one per cent per month, or fraction thereof, from the due date of taxes.

(c) *Service of notice.* The city clerk shall give to the operator written notice of the determination. The notice may be served personally or by mail. If served by mail the service shall be addressed to the operator at the address as it appears in the records of the city clerk. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.

(d) *Time limitation on mailing notice.* Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

(Ord. No. 2009-007, 5-11-09)

Section 70-140. Failure to file return.

(a) *Estimate of gross receipts or total rentals.* If any person fails to make a return, the city clerk shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in this city which are subject to the tax. The estimate shall be made for the period in respect to which the person failed to make the return and shall be based upon any information which is or may come into the possession of the city clerk.

(b) *Interest.* The amount of the determination shall bear interest at the rate of one per cent per month, or fraction thereof, from the 20th day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payment.

(Ord. No. 2009-007, 5-11-09)

Section 70-141. Administration.

(a) *Authority of the city clerk.* The city clerk shall administer and enforce the provisions of this article for the collection of the tax imposed by this article.

(b) *Records required from operators.* Every operator renting guest rooms in this city to a person shall keep any records, receipts, invoices and other pertinent papers in such form as the city clerk may require.

(c) *Examination of records and facilities.* The city clerk may examine or cause to be examined the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms to a person and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(d) *Filing of reports.* In administration of the provisions of this article, the city clerk may require the filing of reports by any persons or class of persons having in the person's possession or custody information relating to rentals of guest rooms, which are subject to the tax. The reports shall be filed with the clerk when required by the clerk and shall set forth the rental charged for each occupancy, the date of occupancy, and such other information as the clerk may require.

(Ord. No. 2009-007, 5-11-09)

Section 70-142. Penalties.

(a) *Time limitation.* At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the city clerk may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with interest, court fees, filing fees, attorneys' fees and other legal fees incident thereto.

(b) *Successor to withhold amount due.* If any operator liable for any amount under this article sells the business or quits the business, the successors or assigns thereof shall withhold a sufficient amount of the purchase price to cover the amount due the city until the former owner produces a receipt from the city clerk showing payment or a certificate stating that no amount is due.

(Ord. No. 2009-007, 5-11-09)

Section 70-143. Liability of successor.

(a) If the purchaser of a business fails to withhold the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price.

(b) *Credit for overpayment.* Whenever the amount of any tax or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this article, it may be offset by the city clerk. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the city clerk, the operator shall have three years from the date of payment to file claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the city clerk, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it was paid, or by administrators or executors thereof.

(Ord. No. 2009-007, 5-11-09)

Chapter 74 TRAFFIC AND VEHICLES[47]

ARTICLE I. IN GENERAL

Section 74-1. Uniform rules of the road adopted.

(a) Pursuant to O.C.G.A. §§ 40-6-372—40-6-376, O.C.G.A. §§ 40-6-2—40-6-395, known as the uniform rules of the road, and the definitions contained in O.C.G.A. § 40-1-1, are hereby adopted as and for the traffic regulations of the county with like effect as if recited in this section.

(b) Unless another penalty is expressly provided by state law, every person convicted of a violation of any provision of this section shall be punished in accordance with section 1-12.

State law reference(s)—Alteration of speed limits by local authorities, O.C.G.A. § 40-6-183.

Section 74-2—74-25. Reserved.

[47]Editor's note(s)—An official list of certain traffic regulations is compiled and published separately by the city as the City of Commerce Traffic Schedule. An official copy of the traffic schedule is on file in the city clerk's office. The traffic schedule is compiled and maintained for the following purposes:

(1) Designation of the location of traffic control devices;

(2) Designation of areas or zones where regulations are applied to parking, loading, bus stops or taxicab stands;

(3) Establishment of speed limits;

(4) Restriction or regulation of traffic at certain times on certain streets or to certain types, weights or sizes of vehicles;

(5) Designation of the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets or truck traffic routes; and

(6) Establishment of regulations upon vehicle turns at designated locations.

Cross reference(s)—Alcoholic beverages, ch. 6; municipal court, ch. 42; offenses and miscellaneous provisions, ch. 46; streets, sidewalks and other public places, ch. 62; vehicles for hire, ch. 82.

State law reference(s)—Authority to provide devices to control the flow of traffic, Ga. Const., art. 9, Section 2, par. 3(a)(4); Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq.; power of local authorities generally, O.C.G.A. § 40-6-371; adoption of uniform rules of the road by local authorities, O.C.G.A. § 40-6-372; prosecution of traffic offenses, O.C.G.A. § 40-13-1 et seq.

ARTICLE II. PARKING[48]

Section 74-26. 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:

Parking space zone means an area designated by white lines within which a vehicle may be temporarily parked.

(Ord. No. 2019-001, 4-15-19)

Section 74-27. Enforcement.

(a) The chief of police or their designee will have the authority to appoint any person who is a citizen of the United States and is of good moral character to enforce the provisions of the parking laws.

(b) Service of citations, limitation. Any person appointed and sworn shall have the power to serve citations for violations for failure to comply with the parking laws in the same manner as any law enforcement officer of the City of Commerce, subject to the following limitations:

  (1) No person so appointed shall be deemed a peace officer, nor have the general powers of a police officer.

  (2) No person appointed shall have the power or duty to enforce any other traffic or criminal laws.

  (3) No person appointed shall have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws.

(c) It shall be unlawful to alter, erase, obscure, or otherwise tamper with any markings made by the police department in the enforcement of this article.

(d) For each violation of this article a citation in the form prescribed by the chief of police shall be issued to the violator.

(e) Each violation of the provision of this article and other ordinances of the City of Commerce relating to the parking of vehicles committed by the same person in the same parking space during the same day shall constitute a separate punishable offense against this article or other ordinances of the City of Commerce and may be treated as such, though there may be multiple violations by the same person in the same parking space during the same day. The exceeding of each segment of time or fraction thereof beyond the initial lawful unit of time shall constitute a separate violation of this section.

(Ord. No. 2019-001, 4-15-19)

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[48]Editor's note(s)—Ord. No. 2019-001, adopted Apr. 15, 2019, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, consisted of §§ 74-26—74-36, and derived from the 1987 Code.

State law reference(s)—Stopping, standing and parking, O.C.G.A. § 40-6-200 et seq.

Section 74-28. Designation of parking places.

The City of Commerce shall have markings painted or placed on the curb or the street for purpose of designating the parking spaces and the angle at which vehicles are to be parked to the curb. Each vehicle parking within any parking space zone shall park within the lines or markings so established. It shall be unlawful to park any vehicle across any such lines or markings or to park such vehicle in such position that the same shall not be entirely within the area designated by such lines or markings.

(Ord. No. 2019-001, 4-15-19)

Section 74-29. Posting signs.

The city manager or their designee authorized by the city council shall cause signs and markings on the curb to be posted in all areas where parking is limited or prohibited, indicating such limitation or prohibitions.

(Ord. No. 2019-001, 4-15-19)

Section 74-30. Manner of parking.

No vehicle shall be parking with the left side of such vehicle next to the curb, except on one-way streets. It shall be unlawful to stand or park any vehicle in a street other than parallel with the curb and with the two right wheels of the vehicle within 12 inches of the regularly established curb line, except that upon those streets that have been marked for angle parking, vehicles shall be parked at the angle to the curb indicated by such marks.

(Ord. No. 2019-001, 4-15-19)

Section 74-31. Parking prohibitions.

It shall be unlawful for any person to cause, allow or permit any vehicle registered in the name of or operated by such person to be parked beyond the period of the legal parking time established by any signage as described in this article.

At any time it shall be unlawful to permit any vehicle to stand in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control device:

(1) In any intersection;

(2) In a crosswalk;

(3) At any place where the standing of a vehicle will reduce the usable width of the roadway for moving traffic to less than 18 feet;

(4) At any place where the vehicle will block the use of a driveway;

(5) At any place where the vehicle will block the driveway entrance to any fire department;

(6) On any sidewalk;

(7) At any place where official signs prohibit parking;

(8) Within 12 feet of any fire hydrant.

(Ord. No. 2019-001, 4-15-19)

Section 74-32. Parking space zones.

Parking space zones shall be such as may be from time to time established by ordinance.

(Ord. No. 2019-001, 4-15-19)

Section 74-33. Parking in excess of two hours.

(a) It shall be unlawful to park any vehicle or to permit a vehicle to be parked in any designated two-hour parking space zone for a period of longer than two hours, except on Sundays and holidays.

(b) The term "holiday" shall include those days designated by an act of Congress, of the state legislature, or by the city council as holidays.

(c) The exceeding of each two-hour segment of time or fraction thereof beyond the initial two-hour unit of time shall constitute a separate violation of this section.

(d) The City Manager or their designee, shall have the authority to temporarily allow parking to exceed two hours during designated special events authorized by the City Council.

(e) Each resident of an upper floor residential unit in the Central Business District shall be restricted to one vehicle for a studio unit and two for all other units. No vehicle shall park on the public streets or alleys in those areas designated as "two-hour parking zones" during the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday or from 8:00 a.m. to 4:00 p.m. on Saturday. All parking shall be restricted to off-street parking whenever possible.

(Ord. No. 2019-001, 4-15-19; Ord. No. 2020-013, 8-17-20)

Section 74-34. Parking for commercial purposes.

It shall be unlawful to park any vehicle upon any street for the purpose of displaying it for sale, or to park any vehicle upon any public street from which vehicle merchandise is peddled.

(Ord. No. 2019-001, 4-15-19)

Section 74-35. Parking in alleys.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of width or roadway for the free movement of vehicular traffic. No person shall stop, stand, or park a vehicle within an alley in such a position as to block the driveway entrance to abutting property.

(Ord. No. 2019-001, 4-15-19)

Section 74-36. Parking on private property.

It shall be unlawful to park any motor vehicle on any private property without the consent of the owner of the property.

(Ord. No. 2019-001, 4-15-19)

Section 74-37. Parking zone violations.

Generally. The owner of a motor vehicle shall be subject to the following fines for the violations enumerated herein:

Loading zones$50.00

Sidewalk$50.00

Fire hydrant$100.00

Double parking$50.00

Blocking driveway$50.00

Parking in excess of two hours where designated signage is located$30.00

No parking zone$50.00

Parking outside the lines of a designated parking space$50.00

(Ord. No. 2019-001, 4-15-19)

Section 74-38—74-49. Reserved.

ARTICLE III. MOTORIZED CARTS

Section 74-50. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

All-terrain vehicle means any motorized vehicle designed for off-road use that is equipped with three or more low-pressure tires and with a seat to be straddled by the operator and with handlebars for steering control.

Automobile means a passenger vehicle primarily designed to legally travel on the highways of this state that usually has an engine capable of propelling the vehicle over 35 miles per hour.

Dirt bike means off-road motorcycle (see Ga. Comp. R. & Regs. 391-4-2-.62), a motor vehicle having a seat or saddle designed to travel on not more than three wheels in contact with the ground, which is not designed, licensed or authorized for use on public roads.

Electric bicycle means a device with two or three wheels that has a saddle and fully operative pedals for human propulsion and also has an electric motor. For such a device to be considered an electric assisted bicycle, it shall meet the requirements of the Federal Motor Vehicle Safety Standards, as set forth in 49 C.F.R. Section 571, et seq., and shall operate in such a manner that the electric motor disengages or ceases to function when the brakes are applied. The electric motor in an electric assisted bicycle shall:

(a) Be incapable of propelling the device at a speed of more than 20 miles per hour on level ground; and

(b) Have a power output of not more than 1,000 watts;

(c) Be incapable of further increasing the speed of the device when human power alone is used to propel the device at or more than 20 miles per hour.

Electric personal assistive mobility device or EPAMD means a self-balancing, two non-tandem wheeled device designed to transport only one person and having an electric propulsion system with average power of 750 watts

(one horsepower) and a maximum speed of less than 20 miles per hour on a paved level surface when powered solely by such propulsion system and ridden by an operator who weighs 170 pounds.

Gross weight means the weight of a vehicle without load plus the weight of any load thereon.

Low-speed vehicle or LSV means any four-wheeled electric vehicle whose top speed attainable in one mile is greater than 20 miles per hour but not greater than 25 miles per hour on a paved level surface and which is manufactured in compliance with those federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001.

Moped means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters) regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour (48.28 kilometers per hour) on level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

Motorcycle means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, dirt bike, and moped.

Motor driven cycle means every motorcycle, including every motor scooter, with a motor, which produces not to exceed five brake horsepower, every bicycle with a motor attached, and every moped.

Motorized cart means every motor vehicle having no less than four wheels and an unladen weight of 1,300 pounds or less and which cannot operate at more than 20 miles per hour.

Motorized play vehicle means a coaster, scooter, pocket bike, any other alternatively fueled device, or other motorized vehicle that is self-propelled by a motor engine, gas or electric, and is not otherwise defined in this Code as a "motorized cart," "low speed motor vehicle (LSMV)," "motor vehicle," "motorcycle," "electric bicycle," motorized skateboard," "electric personal assistive mobility device," or "motorized wheelchair".

Motorized skateboard or motorized scooter means a self-propelled device that has a motor, gas or electric, a deck upon which a person may ride, not equipped with a seat, and at least two tandem wheels in contact with the ground and which is not otherwise defined in this Code as a "motor vehicle," "motorcycle," "motorized play vehicle," "electric personal assistive mobility device," or "motorized wheelchair."

Motorized wheelchair means a self-propelled wheelchair that is used by a physically disabled person for mobility.

Pocket motorcycle or pocket bike means a two-wheeled vehicle other than a motor vehicle, bicycle with helper motor or a motorized scooter and which is propelled by an internal combustion engine, electric motor or other mechanical means, is capable of carrying a rider and/or passenger at a speed in excess of 20 miles per hour, and is designed to replicate the general appearance of a motorcycle, regardless of the scale of the replication which does not meet Federal Motor Vehicle Safety Standards.

Sidewalk means a paved area of generally five feet in width or less that is designed or intended for the use of pedestrian traffic only.

UTV means any motorized vehicle with a combustion engine designed for off-road use equipped with four or six tires and seats inside a roll cage or contained within the body of the vehicle, with or without seat belts, and a steering wheel and a pickup truck style bed. They may not be used on public streets, roads or highways unless it meets the definition of a personal transportation vehicle which is a "farm use vehicle" and is exclusively used in compliance with O.C.G.A. § 40-6-305.

(Ord. No. 2020-012, 8-17-20)

Section 74-51. Registration/decal/transfer requirements.

(a) *Motorized carts/LSV.* It shall be the duty of every owner of a motorized cart or LSV that is operated over the streets and those areas accessible by the public within the corporate limits of the city to register the cart or LSV with the city within ten business days of the date of purchase. Two numerical decals shall be issued upon registration; and a record of each motorized cart or LSV number, along with the name and address of the owner, shall be maintained by the code department. The decals must be affixed to the sides of the cart or LSV in such a manner as to be fully visible at all times. The failure to have a current registration and decal on a motorized cart or LSV shall be a violation of this section.

(1) *Registration fee.* The registration fee shall be $12.00 per cart or LSV for city residents.

(2) *Five-year registration.* The registration fee shall be $12.00 every five years for each cart or LSV.

(3) Registered carts or LSVs shall display the required numbered decal issued by the code division.

a. Assessed registration user fees shall remain with the cart or LSV and attached decals. Recovery of these fees upon the sale of a cart or LSV shall be part of the negotiated price between seller and buyer.

(4) *Registration and payment deadline.* If a cart or LSV is not registered within ten business days of purchase, a $20.00 penalty will be applied in addition to the registration fee; and the cart or LSV shall be considered an unregistered cart or LSV after the ten-business-day period. If the registration is not renewed within the designated renewal period of a registration year, a $20.00 penalty will be applied in addition to the registration fee.

(5) *Transfers.* Upon occurrence of a sale of the cart or LSV to another person who shall operate the cart or LSV over the streets of the city, the registration must be transferred to the new owner within ten business days of the change in ownership at a cost of $12.00. If the registration is not transferred within ten business days, a $20.00 penalty will be applied in addition to the $12.00 transfer charge; and the cart or LSV shall be considered an unregistered cart or LSV after the ten-business-day period.

(6) *Homeowner relocation.* In the event that a registered motorized cart or LSV owner changes his/her address or contact information after the motorized cart or LSV is registered, that owner shall have 30 days to provide their new contact information to the code division. If the ownership information is not updated within 30 days of relocation, a $20.00 penalty will be applied and the cart or LSV shall be considered an unregistered cart or LSV after the 60-day period.

(7) *Special events.* Council may, at its discretion, waive registration requirements for special events of a limited duration to which nonresidents may bring carts or LSV as participants.

(8) *Registration.* Only those persons 18 years or older may register a motorized cart or LSV. Registration may be in one person's name only, and that person must sign the registration form.

(9) *LSV registered with the DMV.* LSV is required to be registered with department of motor vehicles according to O.C.G.A. 40-2-20.

(Ord. No. 2020-012, 8-17-20)

Section 74-52. Operation regulations motorized carts and LSVs.

(a) Only licensed drivers 16 years and older who persons possessing a valid license issued by the state, other state of the United States of America, or international agency, which permits such person to operate a motor vehicle on the highways of the state, may operate a motorized cart or LSV on the streets located within the territorial boundaries of the city. Those persons who have had his or her license to operate a motor vehicle

suspended or revoked by the state which issued said license shall not be permitted to operate a motorized cart or LSV on streets of the city during the time of suspension or revocation.

(b) Those persons who are 15 years of age but not yet 16 years of age may drive a motorized cart or LSV on the or streets of the city:

(1) If he or she has in his or her possession a valid instructional permit issued by the state pursuant to O.C.G.A. § 40-5-24, as may be amended, and has not had his or her instructional permit suspended or revoked, and he or she shall be accompanied in the front seat by a person at least 18 years of age who holds a valid motor vehicle driver's license or he or she shall be accompanied in the front seat by a parent, grandparent or legal guardian.

(c) No person under the age of 15 shall be permitted to drive a motorized cart or LSV on the streets of the city under any circumstances.

(d) All operators shall abide by all traffic regulations applicable to vehicular traffic when using streets in the city.

(e) A permitted motorized cart or LSV may be operated only on a street for which the posted speed limit is 25 miles an hour or less.

(f) A person operating a permitted motorized cart or LSV being operated on a street must have in their possession:

(1) Registration certificate issued by the City of Commerce;

(2) Proof of liability insurance for the motorized cart or LSV; and

(3) Their state issued driver's license.

(g) Motorized carts and LSVs shall not be operated on sidewalks at any time.

(h) Motorized carts or LSVs may be operated over authorized streets only during daylight hours unless such motorized carts or LSVs are equipped with functional headlights and taillights.

(i) No motorized cart or LSV shall be permitted to operate on, over, along, or across any state or federal highway within the boundaries of the city.

(j) It shall be unlawful for the owner of any motorized cart or LSV or any other person operating, employing, permitting the use of or otherwise directing the use of such motorized cart or LSV to operate or permit the operator of any motorized cart or LSV to drive over the streets in the city in violation of this article.

(k) It shall be unlawful to ride upon a motorized cart or LSV other than upon a permanent and regular seat.

(l) It shall be unlawful for a motorized cart or LSV operator or passenger to travel with any person's body parts outside the interior of the cart or LSV.

(m) It shall be unlawful for the operator to allow over-occupancy on the motorized cart or LSV.

(n) A motorized cart or LSV found operating unlawfully may be impounded for the safety of the public and the operator.

(o) Motorized cart and LSV operations are subject to further restrictions during special events and extraordinary events as established by resolution of the city council or order of the city police chief.

(p) The City of Commerce hereby incorporates the requirements of O.C.G.A. 40-6-330(a)for the operation of motorized carts and LSVs. These include:

(1) A reverse warning system.

(2) A removable main power switch.

(3) Reflex reflectors.

(4) Horn.

(5) Rear view mirror.

(6) Safety warning label/traffic triangle.

(7) Hip restraints/seat belts.

(8) Headlights and taillights are required if the motorized cart or LSV will be operated at night.

(9) Braking system.

(10) LSV are required to have an amber strobe light affixed to the top of the vehicle to be in compliance with O.C.G.A. 40-8-35.

(q) All operators shall abide by all traffic regulations applicable to vehicular traffic. Seat belts shall be worn by all occupants at all times the vehicle is moving. All operators and passengers must remain seated at all times during operation. No person may sit on the operator's lap.

(r) Every gasoline powered motorized cart or LSV shall at all times be equipped with an exhaust system in good working order and in constant operation, meeting the following specifications: The exhaust system shall include the piping leading from the flange of the exhaust manifold to and including the muffler and exhaust pipes or include any and all parts specified by the manufacturer; the exhaust system and its elements shall be securely fastened, including the consideration of missing or broken brackets or hangers: The engine and powered mechanism of every gasoline powered motorized cart or LSV shall be so equipped, adjusted and tuned as to prevent the escape of excessive smoke or fumes. It shall be unlawful for the owner of any gasoline powered motorized cart or LSV to operate or permit the operation of such motorized cart or LSV on which any device controlling or abating atmospheric emissions, which is placed on the motorized cart or LSV by the manufacturer, to render the device unserviceable by removal, alteration or which interferes with its operation.

(Ord. No. 2020-012, 8-17-20)

Section 74-53. Operation regulations EPAMD (electric personal assistive mobility device).

(a) No person shall operate any EPAMD on the roadway of certain city streets that are under exclusive city jurisdiction (non-DOT streets, county roads, state, federal highway) unless:

(1) The maximum speed limit of the roadway is 25 miles per hour or less; or

(2) The roadway has a separately striped bicycle lane and the device is operated within the bicycle lane.

(3) When traveling on any roadway, a person operating an EPAMD shall travel in the same direction authorized for motor vehicle traffic on such roadway. (O.C.G.A. § 40-6-320)

(b) All EPAMDs shall be equipped with front, rear, and side reflectors which shall be visible from a distance of 300 feet when directly in front of high beams of headlights on a motor vehicle; a system that when employed will enable the operator to bring the device to a controlled stop; and, if the device is operated between one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light which, while the device is in motion, illuminates the area in front of the operator for a distance of 300 feet.

(c) No person shall operate an EPAMD on any path or sidewalk.

(d) No person shall operate an EPAMD with more than a single user at any time.

(e) Only persons possessing a valid driver's license, or in lieu of a driver's license, persons who are at least 18 years of age and older, may operate an EPAMD on the paved streets located within the territorial boundaries of the city.

(Ord. No. 2020-012, 8-17-20)

Section 74-54. Operation regulations ATVs (all-terrain vehicles).

No person shall operate an ATV on public streets, roads, or highways unless it meets the definition of an all-terrain vehicle which is a "farm use vehicle" and is exclusively used in compliance with O.C.G.A. 40-6-305.

(Ord. No. 2020-012, 8-17-20)

Section 74-55. Operation regulations utvs.

No person shall operate an UTV on public streets, roads, or highways unless it meets the definition of an all-terrain vehicle which is a "farm use vehicle" and is exclusively used in compliance with O.C.G.A. 40-6-305.

(Ord. No. 2020-012, 8-17-20)

Section 74-56. Operation regulations pocket motorcycle or pocket bike.

No person shall operate a pocket motorcycle or pocket bike on public streets, roads, or highways.

(Ord. No. 2020-012, 8-17-20)

Section 74-57. Motorized play vehicle motorized skateboard or motorized scooter; authorizations; prohibitions; disclosure requirements.

(a) No motorized play vehicle, motorized skateboard or motorized scooter may be operated on any public street, public roadway, public sidewalk, public park, public or private parking lot, public trail, public shared multi-use path, public bicycle path, and all other public property.

(b) Motorized play vehicles, motorized skateboard or motorized scooter are permitted on private residential property with the permission of the property owner. In the case of residential property commonly owned by a homeowner association, the homeowner association may regulate such usage.

(c) No motorized play vehicle, motorized skateboard or motorized scooter may be operated on any private commercial/industrial property unless the location where the vehicles are to be operated is inaccessible to normal pedestrian or vehicular traffic.

(d) No person shall operate a motorized play vehicle, motorized skateboard or motorized scooter on any private property in a manner causing excessive, unnecessary, or offensive noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to a reasonable person of normal sensitivity.

(e) The parent, guardian, or legal custodian of any minor shall not authorize or knowingly permit such minor to violate any of the provisions of this section.

(f) Any motorized play vehicle, motorized skateboard or motorized scooter owned by a governmental entity and which is operated in the performance of authorized duties or activities is exempt from the provisions of this section.

(g) Temporary suspension of all or part of this section may be granted by the city council for special events.

(Ord. No. 2020-012, 8-17-20)

Section 74-58. Operation regulations dirt bike.

No person shall operate a dirt bike on public streets, roads, or highways unless it is licensed and authorized by the state to use on public roads.

(Ord. No. 2020-012, 8-17-20)

Section 74-59. Hazardous activities and special rules.

Roads are for transportation by the various groups of permitted users. No individual or group shall engage in hazardous activities on the streets and those areas accessible by the public. Such hazardous activities, and the special rules pertaining to them, include, but are not limited to, the following:

(1) Racing of any form, except for special events approved by the city.

(2) Blocking of public access, except for special events approved by the city.

(3) All laws and ordinances relative to alcohol and its use, including open container laws, which apply to traffic on the streets of the city.

(4) All users of electric bicycles shall wear a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute or the Snell Memorial Foundation's Standards for Protective Headgear for Use in Bicycling or a motorcycle helmet while operating an electric bicycle on the recreational paths.

(5) No one under the age of 15 shall operate an electric bicycle on the city streets.

(6) All occupants shall wear seat belts on motorized carts and LSVs at all times the vehicle is moving.

(7) All operators and passengers must remain seated at all times during the operation of the motorized cart and LSV. No person may sit on the operator's lap during the operation of the motorized cart and LSV.

(Ord. No. 2020-012, 8-17-20)

Section 74-60. Penalties.

(a) Violations of the provisions of this article shall be heard in the municipal court of the city and subject to the penalties set forth in city Code section 1-12.

(b) Any violation of subsections: 74-52(a), (b), or (c) shall be charged against the registered owner of the motorized cart, and all fines and penalties shall be levied against the registered owner of the motorized cart as follows:

(1) For the first offense, a fine of not less than $100.00;

(2) For the second offense, a fine of not less than $300.00;

(3) For a third offense committed within one year of conviction for a second offense for a motorized cart, a fine of $500.00, and the registered owner's motorized cart registration shall be revoked. The registered owner or family member cannot thereafter register a motorized cart for use in the city for a period of two years following the third conviction.

(c) Any violation by an operator of a motorized cart or LSV shall be charged against the operator according to the provisions of Title 40 of the Official Code of Georgia and this Code.

(Ord. No. 2020-012, 8-17-20)

Chapter 78 UTILITIES[49]

ARTICLE I. IN GENERAL

Section 78-1. Supervision of waterworks.

The municipal waterworks shall be under the immediate control and supervision of the director of water/sewer operations who shall perform all acts that may be necessary for the prudent, efficient, and economical management and protection of the waterworks, subject to the approval and confirmation of the city council.

(Code 1987, § 10-101; Ord. No. 2004-02B, 12-13-04)

Section 78-2. Access to premises.

(a) Duly authorized agents of the city shall have access at all hours to the premises of any consumer for the purpose of installing or removing city property, inspecting piping, reading and testing meters, or for any other purpose in connection with the water service and its facilities and the sewer service and its facilities.

(b) Extension to the system shall be made when the consumer shall grant or convey, or shall cause to be granted or conveyed, to the city a permanent easement of right-of-way across any property traversed by the water and sewer lines.

(Code 1987, § 10-102)

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[49]Editor's note(s)—Rates for water service, gas service, sewer service and electric service together with associated fees and deposit amounts shall be as determined from time to time by city council and posted in the city's schedule of fees and charges on file in the city clerk's office. The ordinances and resolutions from which such rates derive are not repealed and shall continue in full force and effect.

Charter reference(s)—Sewer fees, § 6.15.

Cross reference(s)—Buildings and building regulations, ch. 14; businesses, ch. 18; environment, ch. 30; floods, ch. 38; offenses and miscellaneous provisions, ch. 46; solid waste, ch. 58; streets, sidewalks and other public places, ch. 62; subdivisions, ch. 66; taxation, ch. 70; zoning, app. A.

State law reference(s)—Power of city or county to provide stormwater, sewerage collection and disposal systems, Ga. Const. art. 9, Section 2, par. 3; dumping certain wastes in storm or sanitary sewers prohibited, O.C.G.A. § 12-8-2; Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq.; adoption of ordinances, rules and regulations relating to payment for street improvements and construction of water, gas and sewer connections; payment of costs of connections, O.C.G.A. § 36-39-7; city's authority to acquire, construct, extend, operate, maintain and collect fees for water and sewerage systems, O.C.G.A. § 36-34-5; Resource Recovery Development Authorities Law, O.C.G.A. § 36-63-1 et seq.; grants of state funds to municipal corporations for public purposes, O.C.G.A. § 36-40-20 et seq.; executions for collection of assessments for laying sewers, O.C.G.A. § 48-5-358.

Section 78-3. Application for utility service.

(a) All applications for utility service, including, but not limited to, water, sewer, natural gas and electricity shall be submitted on forms provided by the city manager, or his designee, from time to time. At a minimum, the application shall include the following: The name of the applicant, the address of the property requesting service, telephone contact information for the applicant, the applicant's Social Security Number, picture identification of the applicant, current place of employment for the applicant or identification of applicant's support if unemployed, and name, address and telephone number for the owner of the property if other than applicant. Disclosure of the foregoing information is required from the applicant. The information contained on the application shall be used only for the purpose of determining whether to accept the application or to assist the city in the collection of any charges for utilities. If the applicant refuses to supply the required information, the city manager, or his designee, may reject the application.

(b) All applications for utility service shall be made in person, at the City Hall and at the same time the applicant shall make a cash security deposit in an amount set by the city council for utility services.

(c) Application for utility service. All applicants for utility services must follow the inspection procedures as follows:

(1) Upon completing the application for utility services and paying security deposit and/or service charges; the applicant will be given the contact information for the city inspector.

(2) The applicant or property owner must call 24 hours in advance to schedule a utility inspection with the city inspector. The applicant or his designee must be present with the city inspector during the inspection unless the city inspector has made prior arrangements with the applicant.

(3) Any and all code violations on the inspection report prepared by the city inspector must be completed and in compliance before utility services are activated.

(4) Once all code violations are in compliance and no code violations are present; the city inspector will release the property for utility connection and occupancy.

(d) No person shall inhabit a dwelling, which is served by the municipal water system for longer than three days without making the application and paying the deposit provided for above, so that water service may be provided to the dwelling.

(Code 1987, § 10-103; Ord. No. 94-14, 12-12-94; Ord. No. 2007-001, 1-8-07)

Section 78-4. Connection fee for water, sewer services.

Each consumer subscribing to use the water and sewer service of the city shall pay a connection fee of an amount set forth in the schedule of fees and charges.

(Code 1987, § 10-104; Ord. No. 2014-008, 11-14-14)

Section 78-5. Sewer user cost recovery system.

(a) *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:

Combination industrial/nonindustrial wastewater discharger means a person discharging both industrial and sanitary wastewater to the public sewer, provided that industrial wastes are discharged separately from sanitary wastes. Where industrial and sanitary wastes are combined prior to discharge to the public sewer, the entire flow will be considered industrial waste.

Industrial wastewater discharger means a person discharging industrial wastewater to the public sewer.

Nonindustrial wastewater discharger means a person discharging sanitary wastewater to the public sewer.

Unless the context specifically indicates otherwise, the meanings of terms used in this section shall be the same as stated in section 78-71.

(b) *Determination.* The monthly sewer user charge for wastewater discharges (both industrial and nonindustrial) within the city limits shall be computed from the following formula with a minimum charge as set by the city council:

(1) The monthly sewer user charge for wastewater dischargers (both industrial and nonindustrial) outside the city limits shall be as determined from time to time by city council, with a minimum charge as set by the city council.

(2) Determination of the various cost factors, pollutant concentrations and discharged volumes shall be as follows:

a. Cost factors shall be computed annually using cost data attributable to each factor.

b. Pollutant concentration for nonindustrial wastewater dischargers shall remain constant at 225 milligrams per liter, and for industrial wastewater dischargers shall be as analyzed with a minimum of 225 milligrams per liter BOD and suspended solids concentrations for combination industrial/nonindustrial wastewater dischargers will be assumed to be 225 milligrams per liter for nonindustrial flows and shall be as measured for industrial flows.

c. Wastewater discharge volume for nonindustrial dischargers shall be 100 percent of water used. Wastewater discharge volume for industrial dis- chargers shall be the actual volume discharged to the public sewer as measured. Wastewater discharge volume for the nonindustrial portion of combination dischargers shall be assumed to be 25 gallons per employee per day.

d. Treatment plant capacity shall remain constant at 2.1 mgd until treatment facilities are expanded while V shall vary and be as measured at the sewage treatment plant. Adjustments in V shall be made at least annually but may be adjusted more frequently to reflect any major change in actual wastewater volume being received.

(3) Minimum monthly charges for sewer service are established in recognition of the fact that administrative costs related to each customer are unaffected by the volume of sewage generated. Minimum charges therefor ensure that the costs of record keeping and billing are recovered even when only nominal amounts of wastes are being discharged.

(4) User charges for customers outside of the city limits are set at a higher rate established by the city council than for those inside the city limits in recognition of the fact that all public services provided by the city are supported at least indirectly by the general tax revenues of persons inside the city. An incentive is thus maintained for unincorporated areas to apply for annexation into the city and become a part of the general tax base, supporting all the city services.

(c) *Measurements.* Measurement and analysis of industrial wastewater discharged shall be performed in the manner prescribed in sections 78-80(h) and 78-80(i). Measurement and analysis of industrial wastewater dischargers shall be performed by the city at least yearly to determine the discharger's waste characteristics and cost recovery charges.

(d) *Records.* The city will maintain records to verify compliance with this section and accurately record all revenues and expenditures of funds obtained through the sewer user cost recovery system. Documentation will also include records of wastewater measurements and tests, and calculations of recovery charges.

(Code 1987, § 10-106; Ord. No. 2004-02B, 12-13-04)

Section 78-6. Minimum charges.

The minimum charge, as provided in the rate schedule, shall be made for such connection subscribed for. Water furnished for a given lot shall be used on that lot only. Except for fire protection, the city shall not under any condition furnish water free of charge to anyone.

(Code 1987, § 10-107)

Section 78-7. City's responsibility and liability.

The city shall run a service line from its distribution line to the property line where the distribution line exists or is to be constructed and runs immediately adjacent to and parallel to the property to be served. No service charge, other than the connection fee referred to in section 78-3, shall be made for a five-eighths-inch by three-fourths-inch meter. A proportionately greater charge than the connection fee specified above shall be made for a meter of larger dimensions.

(1) The city may make connections to service other properties not adjacent to its lines upon payment of reasonable costs for the extensions of its distribution lines as may be required to render such service.

(2) The city may install its meter at or near the property line or, at the city's option, on the consumer's property within three feet of the property line.

(3) The city reserves the right to refuse service unless the consumer's lines or pipings are installed in such a manner as to prevent cross connections or backflow.

(4) Under normal conditions the consumer will be notified of any anticipated interruptions of service by the city.

(Code 1987, § 10-108)

Section 78-8. Consumer's responsibility and liability.

Water furnished by the city shall be used for consumption by the consumer, members of his household, and employees only. The consumer shall not sell water to any other person or permit any other person to use such water. Water shall not be used for irrigation, fire protection, nor other purposes, except when water is available in sufficient quantity without interfering with the regular domestic consumption in the area served. Disregard for these rules shall be sufficient cause for refusal and/or discontinuance of service.

(1) Where a meter or meter box is placed on the premises of a consumer, a suitable place shall be provided by the consumer therefor, unobstructed and accessible at all times to the meter reader.

(2) The consumer shall furnish and maintain a private cutoff valve on the consumer's side of the meter.

(3) The consumer's piping and apparatus shall be installed and maintained by the consumer, at his expense, in a safe and efficient manner and in accordance with the sanitary regulations of the state health department.

(4) In order to be received as a consumer and entitled to receive water from the city's water system, all applicants shall give proof that any private wells located on their property are not physically connected to the lines of the city's water system. All applicants by becoming consumers of the city covenant and agree that so long as they continue to be consumers of the city they will not permit the connection of any private wells on their property to the city's water system.

(Code 1987, § 10-109)

Section 78-9. Extensions of system.

(a) Duly authorized agents of the city shall have access at all hours to the premises of the consumer for the purpose of installing or removing city property, inspecting piping, reading and testing meters, or for any other purpose in connection with the water service and its facilities, and the sewer service and its facilities.

(b) Extensions to the city's water and sewerage systems shall be made only when the consumer shall grant or convey, or shall cause to be granted or conveyed, to the city a permanent easement or right-of-way across any property traversed by the water and sewer lines.

(Code 1987, § 10-110)

Section 78-10. Billing; collection.

(a) Bills to customers for water and sewer service shall be mailed out on such day of each month as may be determined desirable by the city. Bills shall be paid at the city hall, and a failure to receive bills or notices shall not prevent such bills from becoming delinquent nor relieve the consumer from payment of same. The failure of water and/or sewer users to pay charges duly imposed shall result in the automatic imposition of the following penalties:

(1) Nonpayment within ten days from the due date shall result in a penalty of ten percent of the delinquent account.

(2) Nonpayment within 20 days from the due date shall result in the water being shut off from the water user's property.

(3) Nonpayment within 40 days after the original due date will allow the city in addition to all other rights and remedies, to terminate agreement between the city and the consumer; and in such event, the water user shall not be entitled to receive, nor the city obligated to supply, any water under this agreement.

(b) Service disconnected for nonpayment of bills will be restored only after bills are paid in full, such security deposit as may be required by the city council is made, and a service charge in an amount set forth by the city council is paid for each meter reconnected.

(c) The provisions of this section shall apply to water service, sewer service, natural gas service, electrical service, garbage pickup service and any other utilities provided by the city to the customer. Failure to pay for any such utility service shall authorize the city to disconnect all utilities to the customer. Service disconnected for non-payment of utility charges will be restored only after charges billed for all utility services are either paid in full, or adequate arrangements are made with the city for payment for such utility services.

(Code 1987, § 10-111; Ord. No. 2001-004, 10-8-01)

Section 78-11. Change of occupancy.

Not less than three days' notice must be given, in person or in writing, at the city hall to discontinue water and sewer service or to change occupancy. The outgoing party shall be responsible for all water consumed up to the time of departure or the time specified for departure, whichever period is longer. The new occupant shall apply for water service within 48 hours after occupying the premises and failure to do so will make him liable for payment for the water consumed since the last meter reading.

(Code 1987, § 10-112)

Section 78-12. Suspension of service.

When water and sewer service is disconnected and all bills paid, the security deposit shall be returned to the consumer by the city.

(1) Upon disconnection of service for nonpayment of bills, the security deposit will be applied by the city toward settlement of the account. Any balance will be refunded to the consumer; however, if the security deposit is insufficient to cover the bill, the city may proceed to collect the balance in the usual way provided by law for collection of debts.

(2) The city reserves the right to discontinue service without notice for the following additional reasons:

a. Prevention of fraud or abuse;

b. Consumer's willful disregard of the city's rules;

c. Emergency repairs;

d. Insufficiency of water supply due to circumstances beyond the city's control;

e. Legal processes;

f. Direction of public authorities; or

g. Strike, riot, fire, flood, unavoidable accident.

(Code 1987, § 10-113)

Section 78-13. Complaints; adjustments.

If the consumer believes his bill to be in error, he shall present his claim, in person, at the city hall before the bill becomes delinquent. Such claim, if made after the bill becomes delinquent, shall not be effective in preventing discontinuance of service as heretofore provided. The consumer may pay such bill under protest and such payment shall not prejudice his claim.

(1) The city will make a special water meter reading at the request of a consumer for a fee; provided, however, if such special reading discloses that the meter was overread, no charge will be made.

(2) Water meters shall be tested at the request of the consumer upon payment to the city of the actual costs of making the test; provided, however, if the meter is found to overregister beyond three percent of the correct volume, no charge shall be made.

(3) If the meter is broken by other than the city's representative or if the meter fails to register correctly or is stopped for any cause, the consumer shall pay an amount estimated from the record of his previous bills and/or from other proper data.

(Code 1987, § 10-114)

Section 78-14. Use of city utilities required; non-city utility systems prohibited; penalty.

The owner of all houses, buildings or properties used for human occupancy, business, employment, recreation or any other purposes, situated within the city and abutting on any street, road, alley, easement or right-of-way in which there is now located, or may in the future be located, a public water or sanitary sewer line owned and operated by the city, is hereby required at the owner's expense to connect such house, buildings or properties directly with the city water line and sewer line within 90 days after the date of official notice to do so.

No person, corporation or other entity shall construct, install, maintain or use any other water distribution system or a sanitary sewer system, which is not owned and operated by the City of Commerce, without the expressed written consent of the city manager, as authorized by the mayor and council.

Violation of this section shall be punished in accordance with section 1-12 of this Code.

(Ord. No. 94-11, 11-14-94)

Section 78-15. Reserved.

Section 78-16. Tampering with utility apparatus; diversion of services.

(a) It shall be unlawful for any person intentionally and without authority to destroy, damage or tamper with any meter pipe, conduit, wire, line, post, lamp or other apparatus owned by the city or by any company engaged in the manufacture or sale of electricity, gas, water, telephone, cable television or other public service.

(b) It shall be unlawful for any person intentionally and without authority to prevent a meter from properly registering the quantity of such service supplied, or in any way to interfere with the proper action of the city, or of a company engaged in the manufacture or sale of electricity, gas, water, telephone, cable television or other public service, or intentionally to divert any of the services of the city or such company, or otherwise intentionally and without authority to use or cause to be used, without the consent of the city or such a company, any service manufactured, sold or distributed by the city or such company.

(c) No person shall knowingly receive the benefit of acts or diversion of or tampering with electricity, gas, water, telephone, cable television or other public service without the proper charge.

(d) Proof that any of the acts hereinbefore specified in this section was done on premises in possession of an accused, or that the accused received the benefit of any such act, shall be prima facie evidence that the accused committed such act or aided and abetted in the commission thereof.

(e) Violation of this section shall be punished in accordance with section 1-12 of this Code.

(Ord. No. 2009-002, 1-12-09)

Section 78-17—78-35. Reserved.

ARTICLE II. NATURAL GAS SYSTEM

Section 78-36. 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:

Appliances means all stoves, heaters, hot water tanks, conversion units, and any other devices in which natural gas is used.

Coated pipe means iron or steel pipe which has been thoroughly cleaned and coated with a coating equal to Bitumastic No. 4.

Customer means any person buying gas from the city system.

Customer's inlet means the location of the pipe at the customer's premises where gas is delivered to the customer.

Gas inspector means the duly authorized person hired by the city to inspect, operate, and maintain the gas system.

Gas system means the transmission line from the city, together with all service lines, valves, meters, cocks, regulating equipment and other appurtenances owned by the city.

House piping means the piping in or around the house or building of the customer.

Licensee means any person who has been licensed by the city to install house piping and appliances.

Main means a line, part of the distribution system, that transports gas.

Service line means the line from the main to the customer's inlet.

(Code 1987, § 12-101)

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

Section 78-37. Penalty.

Any person violating the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-12.

(Code 1987, § 12-107)

Section 78-38. Connection and service regulations.

(a) Unless different arrangements in specific cases are approved by the gas inspector and the city, all service lines shall be furnished and laid by the city. The city shall charge an amount set by the city council for the running of a service line up to 100 feet in length and will furnish and install the lockwing cock, regulator and meter. For every foot of service line above 100 feet the city shall charge per lineal foot. If approved by the gas inspector, the city shall run 200 feet of main to service any customer who will use an average amount of gas and who desires such service. If it requires over 200 feet of main to service an additional customer, the customer shall pay for an excess of main above 200 feet per lineal foot. No customer shall be served with gas unless the city can serve such customer at a profit.

(b) Each customer shall deposit an amount set by the city council with the city before a service is installed to the customer's premises. Such will be refunded the customer when the service is disconnected provided the customer does not owe the city anything for the use of gas.

(c) If a customer desires to have his service temporarily disconnected, the city will cut off the gas to the customer. For disconnection inside or outside the city limits, a fee will be charged as set by the city council.

(Code 1987, § 12-102)

Section 78-39. Rates.

Charges for the use of gas shall be set by the city council from time to time.

(Code 1987, § 12-103)

Section 78-40. Gas inspector—Appointment, authority.

The city council shall appoint a gas inspector who shall be authorized and directed to inspect the installation, construction or reconstruction of all house piping, appliances, fittings, or any other appliances that will transport or use natural gas and to operate and maintain the gas system.

(Code 1987, § 12-104(1))

Section 78-41. Same—Duties.

(a) The duties of the gas inspector shall be, in general, to operate and maintain the natural gas system owned by the city in a first class workmanlike condition at all times. He shall also see that all installations and service lines, house pipe and appliances shall be done in such a satisfactory manner with gas and that the safety of any person or property shall not be endangered. He is to perform his duties in accordance with the provisions of this article and to report any violations thereof to the city. All of his actions shall be subject to review by the city council and the decision of the council in all matters shall be final.

(b) Among the duties of the gas inspector, but not necessarily limited to him, are the following:

(1) Keep accurate records of the size of installation of services, the date of such installation, the number, description, location and make of each regulator and meter installed.

(2) Examine applicants who desire a license to install gas pipe appliances and to issue such licenses when the applicant is qualified.

(Code 1987, § 12-104(2))

Section 78-42. License required for installation.

No pipe or appliances installed to use natural gas from the mains and service of the gas system shall be installed by any person unless such person shall be licensed by the city to do such work. Any applicant for a license who is experienced in this type of work, who is familiar with these rules and regulations, and who is a reliable and competent workman, shall be examined by the gas inspector. If the gas inspector is satisfied that this prospective licensee is capable of doing the work in a first class workmanlike manner, a license shall be issued to such person upon payment of a fee as set by the city council. This license will be good for a period of one year from date issued. This license shall be revoked immediately if any licensee shall violate any provisions of this article or shall do any work that is not first class. All persons shall employ a license to install any piping, appliance or any other device through which gas will be transported or used. Such licensee shall notify the gas inspector of his intention to do this work before the work is done.

(Code 1987, § 12-104(3))

Section 78-43. Test of installations.

Every licensee under this article shall test every installation with air by mercury gauge or vacuum gauge in a manner satisfactory to the gas inspector. This test shall include all house piping and appurtenances up to and including the shutoff cock of the appliance. No appliance shall be installed without the licensee notifying the gas superintendent. The gas superintendent shall witness such test and when the test is satisfactory sign a certificate that such test has been made at a certain location and for a certain number of outlets. Such certificate shall be filed in the city clerk's office before any gas is turned into the house pipe. The gas inspector shall inspect all appliances that are installed and see that they are regulated to give safe and proper service. The gas inspector shall

specify the size of the meters and regulators that are used in each installation and shall report the regulators and meters installed.

(Code 1987, § 12-104(4))

Section 78-44. License fees; unsatisfactory work.

A fee shall be charged by the city to the licensee for each house pipe inspection made and certificate issued. If the gas superintendent finds the work done by the licensee unsatisfactory he shall so advise the licensee. The licensee shall then correct any improper work. Another inspection shall then be made for which a fee will be charged. If the work is not satisfactory on the second inspection, the work will be condemned and the license of the licensee shall be revoked.

(Code 1987, § 12-104(5))

Section 78-45. Test of service or house pipe.

No gas shall be turned into a service or house piping until such service or house piping is tested and proved to be gastight.

(Code 1987, § 12-104(6))

Section 78-46. Air bled out of line.

As gas is turned into a service or house piping, the air in the line shall be carefully bled out through the appliance burners or through the dead end of a pipe run. No air shall remain in any part of the piping, however small, at the time the piping starts serving gas.

(Code 1987, § 12-104(7))

Section 78-47. Appliances.

(a) All gas appliances installed in the city shall be of a design and construction approved as to safety by the American Gas Association; except such apparatus as such association does not accept for test and approval must be a design and construction set forth in specifications of Bureau of Standards of the United States Department of Commerce. Used appliances may be reinstalled when, in the opinion of the gas inspector, they may be used without danger.

(b) All pipe used for house pipe shall be of good quality wrought iron or steel either black or galvanized, free from all defects. The use of secondhand or reconditioned pipe is forbidden unless tested and approved by the gas inspector.

(c) Fittings used for house piping shall be either black or galvanized all steel or malleable iron. All stops or cocks should be of ground key type. Where flexible tubing is used it shall be either copper, aluminum, or plastic, satisfactory to the gas inspector.

(Code 1987, § 12-105)

Section 78-48. Specifications for house piping and appliances.

(a) No part of the house pipe that is concealed between walls or other places inaccessible to visual inspection shall have bushings, unions, or threads on it. Ground joint unions and standard iron pipe threads and

couplings are to be used in jointed pipe where such joints are subject to visual inspection. Any pipe laid on the ground or in the ground shall be coated. Any pipe encased in concrete shall be coated and further protected by a wrapping or impervious Bitumen-impregnated paper. All threads shall be made up with the use of good thread compound.

(b) All house pipe shall be securely fastened to floor joists or sills with pipe straps or other approved devices. The maximum spacing on such devices shall be:

½-inch pipe	6 feet
¾-inch pipe	8 feet
1-inch pipe	8 feet
1¼-inch pipe	10 feet

(c) No notch or hole shall be cut in any timber when such notch or hole will reduce the strength of timber over 20 percent.

(d) All house piping shall be graded to a drip located in an accessible place generally directly downstream of customer's meter. The drip shall be of a diameter equal to the size piping to which it is attached and at least six inches in length.

(e) Ells looking down shall be installed at the customer's inlet at a height from the ground approved by the gas inspector. This ell shall be installed in such a manner that the outlet swivel of the meter can be connected thereto.

(f) No branches shall take off from a pipe run from the bottom side of the pipe run.

(g) The minimum diameter of the pipe from the meter to the largest appliance in the house shall be as follows:

Less than 6 outlets	1 inch
6 to 9 outlets	1¼ inches
9 to 12 outlets	1½ inches

Above 12 outlets, the gas inspector shall determine the size of inlet line.

(h) The diameter of the pipe next to the appliance shall be one size larger than the inlet connection of the appliance.

(i) The size line used in the house shall be as follows: In calculating the size of the pipe the calculation should start at the appliance furthest from the meter and proceed successively from that point to the meter.

No. of 1" Outlets	Length in Feet	Size in Inches
1	12	½
1 to 3	50	¾
1 to 3	100	1
1 to 2	300	1¼
2 to 3	20	¾
2 to 4	60	1
2 to 3	160	1¼
3 to 5	40	1
3 to 4	120	1¼
4 to 6	20	1
4 to 3	90	1¼

5 to 6	70	1¼
5 to 7	125	1½
6 to 7	40	1¼
6 to 8	90	1½
7 to 8	30	1¼
7 to 9	75	1½
8 to 12	15	1¼
8 to 11	50	1½
9 to 12	40	1½

(j) All appliances, except movable appliances, shall be installed with steel iron piping together with fittings and unions. Tubing of copper, aluminum, or plastic may be used on small movable appliances provided such tubing is approved by the gas inspector and an adequate compression coupling is used for connections.

(k) A shutoff cock shall be installed in each outlet within two inches of the floor or wall line, as well as a shutoff cock at the appliance itself.

(l) Appliances shall be located far enough from the wall to remove any danger of the wall becoming hot enough to ignite. Vents shall be installed in a size and manner recommended by the manufacturers of the appliance and shall be to the satisfaction of the gas superintendent.

(m) Meters shall be located at a point satisfactory to the gas inspector, particular attention being given to the possibility of damage to the riser or the meter. No meter shall be located in a closed unventilated place. Meters shall be installed in such a manner that they are easily available for reading and servicing.

(n) Each house service shall have in a place readily available a lockwing cock on the riser below the regulator. Except in an emergency it shall be unlawful for anyone except the gas inspector to open or close this cock.

(Code 1987, § 12-106)

Section 78-49—78-70. Reserved.

ARTICLE III. SEWER SERVICE

Section 78-71. 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:

BOD (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

COD (denoting chemical oxygen demand) means the quantity of oxygen utilized as a measure of the oxygen equivalent of that portion of organic matter in a sample that can be oxidized by a strong chemical oxidizing agent.

The COD value is important in industrial waste studies and control of waste treatment plants. Generally the BOD is 50 to 70 percent of the COD depending on the type of organic matter in the water.

Combined sewer means a sewer intended to receive both sewage and storm or surface water.

Constituents means the combination of particles or conditions which exist in the industrial wastes.

Easement means an acquired legal right for the specific use of land owned by others.

Floatable oil means oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial wastes means the liquid wastes from industrial processes as distinct from domestic wastes.

Natural outlet means any outlet including storm sewers and combined sewer overflows into a watercourse, pond, ditch, lake, or other body of surface or ground water.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in moles per liter.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Public sewer means a sewer owned by and directly controlled by the city and approved by the city for use as a sanitary sewer.

Publicly owned pretreatment works or *POPTW* means a "treatment works" which is owned by the city for use as a pretreatment facility to receive industrial wastewater and provide treatment of wastewater to meet standards established by local limits for discharge into the publicly owned treatment works.

Publicly owned treatment works or *POTW* means a "treatment works" as defined by Section 212 of the Federal Clean Water Act (33 U.S.C. § 1292) which is owned by the city. This definition includes any public sewer, devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage and industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Sanitary sewer means a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Sewage means a combination of the watercarried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

Sewerage works means all facilities for collecting, pumping, treating, and disposing of sewage.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm sewer or *storm drain* means a sewer which carries storm and surface waters and drainage, but excludes sewage and polluted industrial wastes.

Superintendent means the superintendent or manager of the sewerage works of the city, or its authorized deputy, agent or representative, as designated by the government authority.

Suspended solids means solids which either float on the surface of, or are in suspension in, water, sewerage or other liquids; and which are removable by laboratory filtering.

Wastewater treatment plant means any arrangement of devices and structures or lagoons used for treating sewage, presently owned or afterward acquired by the city.

Watercourse means natural or artificial channel in which a flow of water occurs, either continuously or intermittently.

(Code 1987, § 11-101; Ord. No. 2004-02B, 12-13-04; Ord. No. 2017-1000, 12-18-17)

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

Section 78-72. Enforcement and penalties.

(a) It shall be the duty of the water and sewer superintendent and other duly authorized employees of the city to enforce the provisions of this article. In the performance of this duty such persons shall be permitted to enter any property at any reasonable time for the purpose of inspection, observation, measurement, sampling, testing, and enforcement.

(b) Any person who violates any of the provisions of this chapter shall, upon conviction, be punished as provided in section 1-12.

(Code 1987, § 11-110)

Section 78-73. Protection from damage.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the municipal sewerage works. Any person violating this section shall be subject to immediate arrest under charge of disorderly conduct or malicious mischief.

(Code 1987, § 11-107)

Section 78-74. Rates and charges.

The rates and charges to be paid by contributors to the city sewerage system shall be as established from time to time by the city council.

(Code 1987, § 11-108)

Section 78-75. Power and authority of inspectors.

(a) The superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling, and testing, in accordance with the provisions of this article.

(b) While performing the necessary work on private properties referred to in subsection (a) of this section, the superintendent or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company.

(Code 1987, § 11-109)

Section 78-76. General regulations.

(a) It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste.

(b) It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment had been provided in accordance with subsequent provisions of this article.

(c) Except as otherwise provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

(Code 1987, § 11-102)

Section 78-77. Connection to public sewers.

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and within 200 feet of a public sanitary sewer to which such house, building or property may be connected so that sewerage will flow therefrom and into such sewer line by gravity, is hereby required at his own expense to install suitable toilet facilities therein, and to connect such facilities directly to such sewer line sewer within 60 days after the date of official notice to do so.

(Code 1987, § 11-103)

Section 78-78. Private sewage disposal.

(a) Where a public sanitary sewer is not available under the provisions of section 78-77, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

(b) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee shall be paid to the city at the time the application is filed.

(c) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall utilize then environmental protection and acceptable building standards, normal to the trade, in arriving at his determination of satisfaction. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the superintendent.

(d) The type, capacities, location, and layout of a private sewage disposal system shall comply with all requirements and recommendations of the state department of natural resources. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 15,000 square feet. No septic tank or cesspool shall be permitted to discharge into any public sewer or natural outlet.

(e) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 78-77, a direct connection shall be made to the public sewer in compliance with this

article, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(f) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the city.

(g) Each person, in constructing, building, or laying pipe or tile as a part thereof, shall stub out, or extend from the sewerage system, so as to connect to the sewerage system each property owner in the area in which such sewerage system is being constructed, built or laid, or in the case of a subdivision, or a proposed subdivision, to each lot to be served by a sewer connection. The connection shall extend to the property line of the property owner.

(1) Each person shall, before paving, repairing or otherwise improving any street, or any area to become a street in the city, stub out, or extend from the sewerage system as it exists in the street right-of-way or the area to become a street, so as to connect to the sewerage system each property owner adjoining such right-of-way on both sides thereof or, in the case of a subdivision, or a proposed subdivision, to each lot to be served by a sewer connection.

(2) If the city council shall deem it necessary to make improvements to streets as defined in O.C.G.A. § 36-39-1, and shall proceed as provided by law, the improvement shall include the stubbing out, or extending from the sewerage system as it exists in the street right-of-way, so as to connect to the sewerage system each property owner adjoining the street right-of-way on both sides, or, in the case of a subdivision, or a proposed subdivision, to each lot to be served by a sewer connection, and the cost of the connections shall be assessed as an improvement as defined in O.C.G.A. § 36-39-1, and in addition to the assessment of the cost of other improvements.

(h) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the superintendent.

(Code 1987, § 11-104)

Section 78-79. Building sewers and connections.

(a) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the superintendent.

(b) There shall be two classes of building sewer permits:

(1) Residential and commercial service, and

(2) Service to establishments producing industrial wastes.

In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee as established by the city council from time to time shall be paid to the city at the time the application is filed.

(c) All cost and expense incident to the construction and connection of the building sewer from the owner's building to the city property line shall be borne by the owner. The owner shall indemnify the city for any loss or damage that may be directly or indirectly occasioned by the connection of the building sewer. Any connection from the city property line into the public sewer shall be made by the city, for which the owner shall pay the city a standard sewer tap fee.

(d) A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another or an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. The building sewer from the front building

may be extended to the rear building and the whole considered as one building sewer. The city does not and will not assume any obligation or response

bility for damage caused by or resulting from any such single connection.

(e) Old building sewers may be used in connection with new buildings when they are found, on examination and test by the superintendent, to meet all requirements of this article.

(f) The building sewer shall be polyvinyl chloride pip (PVC: SDR 26); Ductile Iron Pipe (Class 350 for four inches through 12 inches, Class 250 for 14 inches through 20 inches, Class 200 for 24 inches and Class 150 for 30 inches through 64 inches).

(g) The size and slope of the building sewer shall be subject to the approval of the superintendent, but in no event shall the diameter be less than four inches. The slope of such four-inch pipe shall not be less than one-eighth inch per foot.

(h) Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall, which might thereby be weakened. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipes and fittings.

(i) In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer as approved by the director.

(j) All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the superintendent. Pipe laying and backfill shall be performed in accordance with ASTM Specification C-12; except that no backfill shall be placed until the work has been inspected.

(k) All joints and connections shall be made gastight and watertight.

(1) PVC pipe joints shall be rubber ring type slip joints. Ring/gasket shall be designed to prevent inflow or outflow. The rubber gaskets shall conform to ASTM D-3139 for Polyvinyl Chloride Slip Joint. Joints for rubber push type gaskets and compression joint sealing meeting the requirements of ASTM D-32-12 or F-477. All lubricants and gaskets used shall be suitable for sewage applications.

(2) Ductile Iron Pipe shall be single rubber gasket push-on type, conforming to the requirements of ANSI A21.11; unless mechanical joints conforming to ANSI A21.11 are used. All lubricants and gaskets shall be suitable for sewage applications.

(3) Other jointing materials and methods may be used only by approval of the superintendent.

(l) The connection of the building sewer into the public sewer shall be made at the "Y" branch if such branch is available at a suitable location. If the public sewer is 12 inches in diameter or less, and no properly located "Y" branch is available, the city shall install a "Y" branch in the public sewer at the location specified by the superintendent. Where the public sewer is greater than 12 inches in diameter, and no properly located "Y" is available, a neat hole may be cut into the public sewer to receive the building sewer, which entry is in the downstream direction at an angle of about 45 degrees. A 45-degree ell may be used to make such connection, with the spigot end cut so as not to extend past the inner surface of the public sewer. The invert of the building sewer at the point of connection shall be at the same or at a higher elevation than the invert of the public sewer. A smooth, neat joint shall be made, and the connection made secure and watertight by encasement in concrete. A full sweep cleanout shall also be installed at the property line before connecting with the public sewer. Special fittings may be used for the connection only when approved by the superintendent.

(m) The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer.

(n) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(o) Any industry or establishment introducing industrial wastes to the system shall agree to comply with the United States Environmental Protection Agency's Pretreatment Regulations (40 CFR 128), and shall comply with all pertinent OSHA requirements.

(p) No new connections to the sanitary sewer system shall be made from inflow sources.

(Code 1987, § 11-105; Ord. No. 2004-02B, 12-13-04)

Section 78-80. Use of public sewers and public treatment works.

Section 78-81. Regulation of discharges into public sewers and publicly owned treatment works.

(a) Except as otherwise provided in this section, no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:

(1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit;

(2) Any water or waste containing fats, wax, grease, or oils, whether or not emulsified, in excess of 100 parts per million by weight which may solidify or become viscous at temperatures between 40 and 150 degrees Fahrenheit;

(3) Any gasoline, benzene, naphtha, fuel oil, motor oil, mineral spirits, commercial solvent, or other flammable or explosive liquid, solid, or gas;

(4) Any water or wastes that contain more than ten parts per million by weight of the following gases: hydrogen sulphide, sulphur dioxide, or nitrous oxide;

(5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, offal, plastics, wood, paunch manure, hair and fleshing, entrails, lime slurry, lime residues, beer or distillery slops, chemical residues, paint or ink residues, cannery waste, bulk solids, thread, yarn, tar,latex, unground garbage, whole blood, paper dishes, paper cups, paper or plastic milk containers, strong acid, metal pickling wastes, concentrated plating solutions, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works;

(6) Any stormwater, surface water, groundwater, roof runoff, subsurface drainage, un-contaminated cooling water, or unpolluted industrial process waters;

(7) Any waters or wastes having a pH lower than 6.0 or higher than 9.0 at any time, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the works;

(8) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes of such concentration that any such material received in the composite sewage from the industrial plant exceed the limits for such materials as follows:

Fixed upper limits for constituents (parts per million by weight)

a. Cadmium0.006

b. Chromium1.546

c. Copper0.140

d. Cyanide0.082

e. Nickel0.268

f. Silver0.220

g. Zinc0.231

h. Phenol0.01

i. Iron0.989

j. Manganese0.087

k. Barium0.115

1. Arsenic0.020

m. Lead0.058

n. Mercury0.002

o. Selenium0.04

(9) Any waters containing suspended solids of such character and quantity that unusual provision, attention, or expense is required to handle such materials at the sewage treatment facilities;

(10) Any noxious or malodorous gas or substance capable of creating a public nuisance or hazard to life or preventing entry of workmen into sewers for their maintenance, inspection, and repair;

(11) Any waters containing quantities of radioactive wastes or isotopes in excess of applicable state or federal regulations or recommendations;

(12) Any concentrated dye wastes, spent tanning solutions, or other wastes which are highly colored, or wastes which are of unusual volume, concentration of solids, or composition that may create obstruction to the flow in sewers or other interference with the proper operation and treated effluent of the sewerage works;

(13) Any waters or wastes containing other taste- or odor-producing substances in such concentrations exceeding limits which may be established as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal, or other agencies having jurisdiction over such discharge to the receiving waters;

(14) Any waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment facilities effluent cannot meet the requirements of the state, federal, or other agencies having jurisdiction over discharge to the receiving waters;

(15) Waters or wastes having a five-day BOD in excess of 325 milligrams per liter on a 24-hour composite basis;

(16) The admission into the public sewers of any waters or wastes having a suspended solids content in excess of 325 milligrams per liter on a 24-hour composite basis;

(17) Water or wastes having a concentration of Total Kjeldahl Nitrogen (TKN) in excess of 60 milligrams per liter on a 24-hour composite basis;

(18) The admission into the public sewer of any waters of wastes having a phosphorus as P content in excess of seven milligrams per liter on a 24-hour composite basis;

(19) Scavenger wastes shall not be permitted to be disposed of in the sewer system. Scavenger wastes are considered to be any putrid or offensive matter, the contents of septic tanks and cesspools; and

(20) All other materials and substances, chemicals or chemical compounds and/or industrial wastes shall not be permitted to be discharged into the public sewer systems except as theretofore provided.

(b) Should waters or wastes be discharged or be proposed to be discharged to the public sewers, where such waters contain substances or possess the characteristics prohibited by this article, the city may:

(1) Terminate admission of prohibited waters or wastes into the public sewers whenever discovered to exist;

(2) Refuse proposed admission of prohibited waters or wastes into the public sewers;

(3) Require pretreatment to a permissible condition of any waters or wastes as a condition to acceptance into the public sewers;

(4) Require control over the quantities and rates of waters or wastes entering the public sewers; or

(5) Require payment to cover the added capital and operating costs, not covered by existing taxes or sewer charges, to cover the added cost of handling and treating otherwise prohibited wastes.

Payments for exceeding the established limits as outlined in section 78.80, subsections a—e will be computed as follows:

a. *Biochemical oxygen demand.* One dollar and nine cents ($1.09) per every pound of biochemical oxygen demand in 325 milligrams per liter (mg/l).

b. *Suspended solids.* One dollar and eighteen cents ($1.18) per pound of total suspended solids (SS) in excess of residential criteria up to 325 milligrams per liter (mg/l).

c. *Total Kjedahl Nitrogen (TKN).* Six dollars and twenty-one cents ($6.21) per pound of Total Kjedahl Nitrogen (TKN) in excess of residential criteria up to 60 milligrams per liter (mg/l).

d. *Oil and grease.* Two dollars and forty-five cents ($2.45) per pound of oil and grease in excess of residential criteria up to 100 milligrams per liter.

e. *Silver.* One thousand three hundred thirteen dollars and eighty-four cents ($1,313.84) per pound of silver in excess of residential criteria up to 0.220 milligrams per liter.

f. *Chromium.* Eleven thousand eight hundred seventy-six dollars and eight cents ($11,876.08) per pound of chromium in excess of residential criteria up to 1.546 milligrams per liter.

g. *Copper.* Two thousand four hundred seventy-nine dollars and seventy-five cents ($2,479.75) per pound of copper in excess of residential criteria up to 0.140 milligrams per liter (mg/l).

h. *Lead.* Two thousand one hundred fifty-five dollars and forty-four cents ($2,155.44) per pound of lead in excess of residential criteria up to 0.058 milligrams per liter (mg/l).

i. *Nickel.* Five thousand five hundred eighty-two dollars and thirty cents ($5,582.30) per pound of nickel in excess of residential criteria up to 0.268 milligrams per liter (mg/l).

j. *Zinc.* One thousand one hundred ninety-nine dollars and thirty-seven cents ($1,199.37) per pound of zinc in excess of residential criteria up to 0.231 milligrams per liter (mg/l).

k. *Cyanide.* Three thousand nine hundred seven dollars and sixty-one cents ($3,907.61) per pound of cyanide in excess of residential criteria up to 0.082 milligrams per liter (mg/l).

1. *Arsenic.* One hundred twenty-one thousand one hundred thirty-five dollars and ninety-seven cents ($121,135.97) per pound of arsenic in excess of residential criteria up to 0,020 milligrams per liter (mg/l).

m. *Mercury.* One hundred fifty-one thousand four hundred nineteen dollars and ninety- six cents ($151,419.96) per pound of mercury in excess of residential criteria up to 0,002 milligrams per liter (mg/l),

(c) Where pretreatment or control over quantities of wastes is required, the design and installation of the plants and equipment shall be subject to the review and approval of the state water quality control board and the city.

(d) Where privately owned pretreatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and efficient operation by the owner thereof at his expense,

(e) When required by the city, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole on the building sewer on his property to facilitate observation and sampling the measurement of wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the city. The manhole shall be installed by the owner at his own expense and shall be maintained by him so as to be safe and accessible at all times. The manhole shall be located on the industrial waste service connection with all sanitary wastes excluded.

(f) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with generally accepted laboratory procedures approved by the state water quality control board, and shall be determined at the control manhole provided in subsection (e) of this section, or upon suitable samples taken at such control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

(g) Any approval by the city of a type, kind, or capacity of an installation shall not relieve a person of the responsibility of revamping, enlarging, or otherwise modifying such installation to accomplish the intended purpose. Nor shall any written or verbal agreement as to limits of constituents or volumes of waters or wastes be considered as final approval for continuing operation. These limits shall be subject to constant study and change as considered necessary to serve their intended purpose.

(h) Upon an accidental spill or unavoidable loss to the drains of any deleterious material, the industry concerned shall promptly notify the city of the nature of the spill, the quantity, and the time of occurrence.

(Code 1987, § 11-111; Ord. No. 2001-001, 1-8-01; Ord. No. 2004-02B, 12-13-04; Ord. No. 2017-0800, 11-6-17; Ord. No. 2017-1000, 12-18-17)

Section 78-82. Fats, oil, and grease.

(a) *Definitions.*

Existing facility: A building in place prior to move-in by a new or current business.

Fats, oils, and greases (FOG): Any substance such as a vegetable or animal product that is used in, or is a by-product of, the food preparation process, that turns or may turn viscous or solidifies or may solidify with a change in temperature or other conditions.

GMP official: A member of the staff of the city grease management program.

Grease hauler: A person who collects contents of grease interceptor or trap and transports it to approved recycling or disposal facility.

Grease trap/interceptor: A device used to allow sewerage to be retained so that grease and solids will separate from the water into layers before the water is allowed to flow into the city sewer system.

Grey water: All water of the liquid contained in a grease interceptor that lies below the floating grease layer and above the food solids layer.

New facility: An individual newly constructed one occupancy building or strip mall type building, or an expanded/renovated existing facility where such facilities did not previously exist.

User: Any food establishment, or other facility as defined below, which discharges wastewater into the city's sewer system.

(b) *General.* Except where more complete pretreatment may be required; fat, oil, grease and/or sand interceptors shall be provided at all service stations, commercial or industrial food handling establishments and reed mills. Additionally, any other commercial, industrial establishment or any institution generating a wastewater containing greater than 100 mg/L FOG shall provide an appropriate interception device. Such devices shall be necessary for the proper handling of liquid wastes containing grease, and/or oil in excessive amounts, any flammable wastes, sand, or other harmful ingredients except that such interceptors shall be of a type and capacity approved by the director and/or superintendent.

(c) *Grease trap requirements*

(1) Outdoor grease trap design and installation shall conform to the City of Commerce Sanitary Sewer Standards, as shown in figures 1 and 2, and shall be of a type and capacity approved by the director. It shall be sufficiently sized (no smaller than 1,000 gallons and not larger the 3,000 gallons) in order to achieve and maintain compliance as indicated under subsection (b). In certain cases, multiple interceptors may be utilized. All grease traps must be approved by the wastewater supervisor prior to installation.

The trap shall be located with easy access for cleaning, pump-out and official inspection. All scullery sinks, mop sinks, floor drains, dishwashers, hub drains and open receptacles shall drain to the outside grease trap. Dishwasher and food grinder wastewater shall be discharged through a suitably sized solids interceptor prior to emptying to the outdoor grease trap.

(2) The city may approve installation of an indoor trap if site restrictions prevent an outdoor trap installation. A variance must be applied for and approved, per the variance procedures in 78-82(d)(6). The minimum size for an indoor trap is 50 pounds. All drains shall be installed similarly as described for the outdoor type. (It is prohibited to discharge wastewater with a temperature higher than 140 degrees Fahrenheit, acid, or caustic trap cleaners into an indoor grease trap.)

(3) Mechanically operated grease traps (i.e.: Big Dipper, skimmers, etc.) may be used in lieu of the grease trap requirements outlined in this section ONLY at the discretion of the director on a case-by-case basis.

(4) A sampling point shall also be provided at the user's expense to allow for observation, sampling, and measurement of wastewater. It shall be located on the effluent discharge side of the grease trap. The sampling point shall be maintained, kept safe and accessible to the city at all times.

(5) If an existing facility has no grease trap or, as documented by inspection, it is determined that the current grease trap is insufficient for the volume of FOG waste being treated, the city may require an upgraded trap of an adequate size including a sampling point as described in subsection (4) above. An existing trap may be determined to be insufficient if the business located in the facility changes. If an existing facility using only a mechanical trap is found to be in noncompliance three times within six months, the user will be required to upgrade to a new installation as outlined under subsections (1)—(4) above. (Ref. subsection (e)). If an upgrade the existing trap is not feasible due to size and area restrictions, the variance procedure in section (d)(6) of this section must be followed.

(d) *Grease management program.*

(1) *Inspection, cleaning, and maintenance.* The user will be responsible for inspection and cleaning of grease traps. Outdoor grease interceptor maintenance shall be performed at intervals of not less than once every 12 weeks. Indoor grease interceptor maintenance shall be performed at intervals of not less than once every four weeks. However, food service establishments that serve or prepare 500 to 1,000

servings per month may be serviced not less than every six months and those serving fewer than 500 servings per month may be serviced not less than every 12 months. All maintenance frequencies above are contingent on the interceptor discharge concentrations not exceeding permissible FOG concentrations stated. Receipts of this service must be submitted to the City of Commerce on a monthly basis, on the 15 day of each month. If a receipt verifying service is not provided, citations and fines will be issued. After three months, the city will provide maintenance to the grease trap and will bill the user for the cost incurred. All repairs and maintenance of grease traps are the responsibility of the owner.

(2) *Inspection.* Grease traps shall be inspected by the city as necessary to assure proper efficiency of the grease trap is being achieved.

(3) *Repairs.* The food service facility shall be responsible for the cost and scheduling of all repairs to its grease trap(s). Repairs required by a GMP official shall be completed within 30 calendar days after the date of written notice of required repairs is received by the facility unless the city approves in writing of a different schedule.

(4) *FOG waste haulers.* Waste haulers must have written permission from the city, in order to return any gray water back into the grease interceptor. This permission will be granted on a case-by-case basis and will depend upon the methods by which the solids and grease are separated in order to assure that clear water is the only material returned to the grease interceptor. All FOG waste haulers must be on the city environmental protection division list of FOG commercial transporter list. FOG numbers must be provided to city officials at any time and listed on each receipt and invoice.

(5) *Interceptor pumping frequency.* Each facility's outdoor grease interceptor will be pumped at least once every 12 weeks. Indoor grease interceptors will be pumped at least once every four weeks. The city also has the right to pump a facilities' grease interceptor more frequently if the city determines it to be necessary or prudent.

(6) *Variance procedure.* This procedure must be followed if a food service facility determines that pumping once every 12 weeks is excessive or that an indoor trap is necessary, then the facility may make written application for a variance from the above-described pumping schedule.

a. The food service will submit an application on a form provided by the city.

b. At the time which the grease interceptor is due to be pumped a representative of the city will collect a sample from the discharge point of the grease interceptor. After the sample is collected it will be analyzed for fats, oils, and grease content by a laboratory chosen by the city.

c. For the variance to be considered, the sample must show a fats, oils, and grease content of less than 100 mg/l. If the sample does show a level below this then a sample will be taken once a week until the sample exceeds the 100 mg/l mark established. Thus, the time elapsed between the last pumping and the time at which the sample exceeds the above mentioned mark will then be the frequency at which that particular trap is pumped.

d. If at any time the food service facility changes ownership or does any type of renovation the schedule will revert to the original schedule established by the city.

e. If the initial sample taken from a grease interceptor is not below the 100 gm/l mark then the variance will not be considered.

(7) *Disposal.* Wastes removed from each grease interceptor shall be disposed of at a facility permitted by the State of Georgia Environmental Protection Chapter of the Georgia Department of Natural Resources to receive such wastes or at a location designated by the city for such purposes. Neither grease or solid materials removed from interceptors shall be returned to any grease interceptor, private sewer line or to any of the city wastewater collection system or water reclamation facilities without prior written permission [from the] GMP official.

(8) *Monitoring.* The city shall have the right to sample and analyze the wastewater from any food service facility at any time to determine levels of grease contained within a facilities discharge.

(9) *Spill reporting.* Any accident, spill, or other discharge of grease of gray water which occurs withing the city shall be reported to the city by the grease hauler as soon as possible but not longer than 24-hours after the incident. The grease hauler shall comply with all procedures contained in federal, state, and local regulations. The grease hauler shall be responsible for all clean up procedures and costs.

(10) *Record keeping.* Each facility shall keep records on site of grease trap inspection, cleaning, and maintenance. The records shall remain available for inspection and copying for a period of at least three years and available at all times for city review. Grease haulers shall retain and make available for inspection and copying, all records related to grease interceptor pumping and grease disposal from businesses connected to the city wastewater collection service system. These records shall remain available for a period of at least three years. The city may require additional record keeping and reporting, as necessary, to ensure compliance with the terms of this section.

(11) *Vehicle inspection.* Grease haulers shall permit the city to inspect grease hauler's registered vehicles.

(12) *Citations and fees.*

a. *Citations.* Violators of the provisions of this section shall be subject to be issued a citation to appear in the city municipal court to answer to the charge. Any grease traps users that fail to submit a receipt or proof of service by the 15 day of each month will be subject to citation following 30 days of noncompliance. Citations will be issued by the building official or code enforcement officers.

b. *Pumping Fees.* Facilities shall be charged $0.25 per gallon pumped and a $104.50 entry fee for pumping traps/inceptors located inside a facility.

c. *Fees and billing.* The fees provided for in this section are separate and distinct from all other fees chargeable by the city. All fees shall become immediately due and owing to the city upon receipt of invoice(s) for rendition of services or expenditure by the city and shall become delinquent if not fully paid within 45 days after receipt. Any delinquent amount shall be subject to a late charge of 15 percent. Fees applicable to this section are as follows:

d. *Pumping fees.* In the event that the City of Commerce deems it necessary clean dispose of FOGs at a facility after a period of delayed maintenance that has resulted in damage or obstruction to City of Commerce sewer lines and facilities, the city may obtain services to clean the grease trap. The costs incurred will be charged to the facility owner.

e. All fees provided for herein may be adjusted by the city as it deems to be appropriate.

(Amended 03/15/2021)

(13) *Search warranty.* The city, through the city attorney may seek to obtain a search warrant from the appropriate authority to gain access to a food service facility for the purposes of inspection and monitoring if such lawful entry has previously been denied by the food service facility.

(14) *Injunctive and other relief.* The city, through the city attorney, may file a petition in the name of the city in the municipal court, the superior court of the county or such other court as may have jurisdiction seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this section or other applicable law or regulation. Suit may be brought to recover any and all damages suffered by the city as a result of any action or inaction of any person who causes or suffers damage to occur to the city's wastewater collection system, or for any other expense, loss or damage of any kind or nature suffered by the city.

(15) *Criminal mischief.* No person shall maliciously, willfully, or deliberately break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the city

sewer system or utilities department. Any person violating this provision shall be subject to immediate arrest under charge of destruction of public property.

(16) *Remedies nonexclusive.* The remedies provided for in this section are not mutually exclusive. The GMP official may take any, all, or any combination of these actions against a noncompliance person.

(17) *Penalties—Falsifying information.* Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this section, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this section or shall violate any other provision of this section, shall be subject to a penalty in an amount not to exceed $500.00 or by imprisonment for not more than six months, or by both. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

(18) *Service revocation.* Any services provided by the city may be suspended for the following reasons:

a. Falsification of any information submitted as part of the registration.

b. Failure to comply with any requirements or regulations concerning discharges to the city wastewater collection system.

c. Failure to comply with any requirements or regulations concerning grease interceptors.

d. Failure to pay required fees, or any assessed surcharges in a timely manner.

(e) *FOG wastewater discharge permit.*

(1) Food service establishments proposing to discharge or currently discharging wastewater that contain FOG into the city sewer system shall obtain a FOG wastewater discharge permit annually or cease ongoing operation until such permit is obtained. In addition to any other penalties authorized by law, failure to obtain such a permit shall subject the food service establishment to the potential of the disconnection of water service, until such permit is obtained.

(2) FOG wastewater discharge permits shall be subject to all provisions of this section and all other regulations, charges for use, and fees established by the city. The city in accordance with this section and applicable law shall have the authority to enforce the conditions of FOG wastewater discharge permits.

(3) The FOG wastewater discharge permit shall be issued upon:

a. Receipt of a complete application;

b. Compliance with this section;

c. Compliance with the applicable provisions of this Code; and

d. The proper installation and maintenance of a FOG interceptor that complies with the applicable provisions of this Code. A permit will be issued or denied with in 30 days based on compliance with this section. If the permit is not issued or denied within the time frame specified herein, the permit shall be deemed issued and approved.

(f) *FOG wastewater discharge permit application.*

(1) All food service establishments are required to obtain a FOG wastewater discharge permit and shall complete and file with the city prior to commencing or continuing discharges, an application for a wastewater discharge permit in a form prescribed by the city along with any applicable fees. The applicant shall submit, in units and terms appropriate for evaluation, the following information:

a. Name, address, telephone number, assessor's parcel number(s), description of the food service establishment, operation, cuisine, service activities, and, as applicable, clients using the applicant's services;

b. Whichever is applicable, the name and address of any and all principals/owners/major shareholders of the food service establishment, sections of incorporation, certificate of organization most recent registration with the secretary of state, and a copy of the owner's business license;

c. Name and address of property owner or lessee and the property manager for the property where the food service establishment is located; and

d. Any other information specified in the application form.

(2) Applicants may be required to submit site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, FOG control devices, FOG interceptors, or other pretreatment equipment and appurtenances by size, location, and elevation for evaluation.

(3) Other information related to the applicant's business operations and potential discharge may be requested to properly evaluate the permit application.

(4) After evaluation of the data furnished, the city may issue a FOG wastewater discharge permit, subject to the terms and conditions set forth in this section and as otherwise determined by the FOG control program manager to be appropriate to protect the city's sewer system.

(5) The FOG wastewater discharge permit and application fee shall be paid by the applicant in an amount established from time to time by action of the city council. Payment of the application permit fee must be received by the city at the time of filing the application for the permit. A food service establishment shall also pay any delinquent invoices or payments due the city, such as taxes, fee, or utility charges, in full prior to any permit renewal.

(6) An application shall not be considered complete until all the information required by this section is provided to the FOG control program manager or designee. The FOG control program manager shall have 15 business days from receipt of such information to advise a food service establishment that an application is not complete.

(g) *FOG wastewater discharge permit conditions.*

The issuance of a FOG wastewater discharge permit may contain any of the following conditions or limits:

(1) Limits on discharge of FOG (100 mg/L), which may cause or contribute to sanitary sewer overflows and/or sewer blockages;

(2) Requirements for proper operation and maintenance of FOG interceptors and other FOG control devices;

(3) FOG interceptor maintenance frequency and schedule;

(4) Requirements for implementation of best management practices and installation of adequate FOG interceptor and/or FOG control device;

(5) Requirements for maintaining and reporting status of best management practices;

(6) Requirements for maintaining and submitting logs and records, including waste hauling records and waste manifests;

(7) Requirements to self-monitor the discharge to the sewer system and periodically assess and report on the condition of the sewer lateral;

(8) Requirements for the food service establishment to construct, operate and maintain, at its own expense, a FOG control device(s) and sampling facilities;

(9) Additional requirements as otherwise determined to be reasonably appropriate by the FOG control program manager to protect the city's sewer system or as specified by other regulatory agencies; and

(10) Other terms and conditions, which may be reasonably applicable to ensure compliance with this section.

(h) *FOG wastewater discharge permit modification of terms and conditions*.

(1) The terms and conditions of an issued permit may be modified by the FOG control program manager if there is a change in:

a. The generator's current or anticipated operating data;

b. City's current or anticipated operating data;

c. In the requirements of regulatory agencies, which affect the city; or

d. A determination by the FOG control program manager and his or her designee that such modification is required to comply with the provisions of this section.

(2) The food service establishment may request a modification to the terms and conditions of an issued permit. The request shall be in writing stating the requested change and the reasons for the change. The GMP control program manager shall review the request, make a determination on the request, and respond in writing within 30 days of receipt of the request.

(3) The food service establishment shall be informed of any change in the permit limits, conditions, or requirements at least 45 days prior to the effective date of the change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance, not to exceed 45 days.

(i) *Permits for new and existing facilities, grandfathering, and effective date.*

(1) *New facilities.* Food service establishments, which are newly proposed, constructed, or existing facilities which will be expanded or renovated, shall be required to install a properly sized FOG interceptor according to the requirements set forth in this section and such FOG interceptors shall be permitted and installed prior to the issuance of a certificate of occupancy for the food service establishment. New food service establishments locating within existing buildings may be exempt from installing an external FOG interceptor if the GMP official deems that it is not feasible. In the event that an external FOG interceptor is deemed to be infeasible, the new food service establishment must install in internal FOG interceptor.

(2) *Existing facilities.* The city requires all existing food service establishments to install, operate, and maintain a FOG interceptor that complies with the requirements set forth in this section. All food service establishments shall repair or replace any noncompliant plumbing or the existing FOG interceptor within 90 days of written notification by the city if any one or more of the following conditions exist or occur:

a. The facility is found to produce any product that creates FOG as a byproduct;

b. The facility does not have a FOG interceptor;

c. The facility has an undersized, irreparable, improperly configured, or defective FOG interceptor;

d. Remodeling of the food preparation or kitchen waste plumbing system is performed which requires a plumbing permit to be issued by the city;

e. The existing facility is sold or undergoes a change of ownership or expansion;

f. The existing facility does not have plumbing connection to a FOG interceptor in compliance with the requirements of the city; or

g. If a food service establishment changes its business name.

(3) *Grandfathering.* If an existing food service establishment is housed in a structure that because of its architectural/ design restrictions and determined by GMP control program official that an external FOG interceptor is not feasible because, the owner will not have the ability to install an external FOG interceptor, or be able to upgrade the existing FOG interceptor, then the establishment may keep the current FOG interceptor in place provided that all fresh air fixtures must be tied into the current FOG interceptor, and the FOG interceptor must be at least 15 feet from the last fresh air fixture. Additionally, the FOG interceptor must be cleaned every 4 weeks at a minimum by a Georgia State permitted transporter. In the event that any remodeling of such a food service establishment is undertaken or if the food service establishment changes ownership, then a FOG interceptor that complies with all applicable requirements of this code shall be installed. Approval for the grandfathered indoor receptor must be approved through the variance process as outlined in this section.

(4) *Notification of planned changes.* All food service establishments shall notify the FOG compliance manager at least 90 days in writing in advance prior to any change of ownership, facility expansion/remodeling, or process modifications that may result in new or substantially increased FOG discharges or a change in the nature of the discharge. All food service establishments shall submit any information requested by the city for evaluation of the effect of such expansion on the food service establishment's FOG discharge to the sewer system.

Editor's note(s)—The city's fats, oils, and grease (FOG) permits fee schedule is not set out at length herein but is on file and available for inspection in the office of the city clerk.

(j) *FOG wastewater discharge permit duration and renewal.*

(1) FOG wastewater discharge permits shall be issued annually. At least 30 days prior to the expiration of the permit. The user shall apply for renewal of the permit in accordance with the provisions of this section.

(2) For new food service establishments applying for a new permit after February 1, the FOG wastewater discharge permit fee for the first year shall be prorated based on the number of months remaining in the year.

(k) *Exemption from FOG wastewater discharge permit.*

A limited food preparation establishment is not considered a food service establishment and is exempt from obtaining a FOG wastewater discharge permit.

(l) *Non-transferability of permits and fees.*

(1) FOG wastewater discharge permits issued under this section is for a specific food service establishment, for a specific operation, and create no vested rights.

(2) No permit holder shall assign, transfer, or sell any FOG wastewater discharge permit issued under this section nor use any such permit for or on any premises or for facilities or operations or discharges not expressly encompassed within the underlying permit.

(3) A permitting fee that covers the administrative costs of the city for administering the FOG program shall be established by the city and assessed to each facility subject to this section.

(Ord. No. 2001-006, 12-10-01; Ord. No. 2007-10, 11-1-07; Ord. No. 2021-001, 3-15-21; Ord. No. 2022-009, § 1, 12-19-22)

Editor's note(s)—Ord. No. 2022-009, § 1, adopted December 19, 2022, repealed the former § 78-82, and enacted a § 78-82 as set out herein. The former § 78-82 pertained to similar subject matter grease, oil and sand interceptors and derived from Ord. No. 2001-006, adopted December 10, 2001, Ord. No. 2007-10, adopted November 1, 2007, and Ord. No. 2021-001, adopted March 15, 2021.

Section 78-83—78-100. Reserved.

ARTICLE IV. MAINTENANCE OF ELECTRICAL DISTRIBUTION SYSTEM

Section 78-101. Duty of city.

The city shall take any and all acts necessary to remove any obstructions or hazards to the city's electrical distribution system, or any of its various components, and to maintain the system so as to prevent any future obstructions or hazards.

(Ord. No. 93-001, § 1, 1-11-93)

Section 78-102. Duty of property owner.

It shall be the duty of each property owner in the city to maintain his premises, including, but without limitation, any trees, shrubbery or other vegetation, or any manmade structure on his premises, in such a manner so as not to present any hazard or obstruction to the electrical distribution system or any of its various components. Upon written notice to the owner from the city to remove any such hazard or obstruction, the owner shall have ten days to comply. Failure to so comply shall constitute a violation of this section and shall, upon conviction, be punished as provided in section 1-12. Each day that the owner fails to remove the hazard or obstruction shall constitute a separate offense.

(Ord. No. 93-001, § 3, 1-11-93)

Section 78-103. Inspection by city manager.

The city manager or his designee shall, from time to time, inspect the electrical distribution system and take all acts necessary to remove any hazards or obstructions therefrom. This shall include, but is not limited to, the removal of trees, tree limbs, shrubbery or any other vegetation, or the removal of any manmade structure, which presents a hazard to the system or to the public or presents an obstruction to the reasonable and necessary maintenance and operation of the system.

(Ord. No. 93-001, § 2, 1-11-93)

Section 78-104. Rate adjustments.

The city manager is authorized to adjust rates for electrical service from time to time as necessary to recover the power cost adjustment charged to the city by its wholesale supplier of electricity. Such adjustments shall reflect only the changes in the power cost adjustment to the city. Any rate changes in excess of those needed to cover wholesale power costs shall be approved by the city council before becoming effective.

Schedule A attached to the ordinance from which this section derives shall constitute the schedule of electric rates in the city effective February 1, 2013. This schedule shall remain in effect until modified by the council or until modified by the city manager to recover wholesale power costs as set forth herein above.

(Ord. No. 2013-001, 1-11-13)

Editor's note(s)—Schedule A, attached to Ord. No. 2013-001, is on file and available for inspection in the office of the city manager.

Section 78-105. Attachment of equipment to electric facilities.

(a) Georgia law, including without limitation the Revenue Bond Law, O.C.G.A. § 36-82-60 et seq., authorizes the City of Commerce, Georgia (the "city") to prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished or made available by such undertakings, including without limitation its herein after defined electrical facilities.

(b) The city is an "electrical supplier" under the Georgia Territorial Electric Service Act, O.C.G.A. Title 46, Chapter 3, Article 1. As such, the city installs, maintains, and operating poles, wires, towers, transformers, and other equipment for the supply and distribution of electrical power ("electrical facilities").

(c) The city finds it is in the best interest of the city and its residents and businesses and electric service customers to establish requirements, specifications reasonable conditions regarding the attachment to or colocation on electrical facilities. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the city and to reasonably manage and protect the city's electrical facilities.

(d) The objective of this section is to:

(1) Provide for the reasonable attachment of any equipment (as defined herein below) to electric facilities in the city; and

(2) Ensure the safe use and operation of electrical facilities consistent with the national standards and efficient utility operations.

(e) Definitions. As used in this section, the following terms have the following meanings:

Attachment means any equipment attached to a pole, including, but not limited to, brackets, cables, service drops, power supplies, amplifiers, pedestals, bonding wires, overlashings, guy wires and anchors required to support unbalanced loads. A single attachment includes the vertical space consisting of a total of 12 inches either above or below, but not both, the bolted attachment, exclusive of riser or conduit.

Make ready means all work necessary or appropriate to make space for or otherwise accommodate new, additional or changed attachments, including, but not limited to, necessary or appropriate rearrangements, removal and replacement of the pole, transfers and other work incident thereto.

Make ready costs means all costs necessary for the city, and other existing parties on the applicable pole, to prepare the poles for a provider's new, additional or modified attachments, including, but not limited to, the costs of materials, labor, engineering, supervision, overheads, and tree trimming costs. Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements. Also included among make ready costs are the costs of installing or changing out primary poles, secondary poles and drop and lift poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications as required by the city. City make ready costs shall be verifiably comparable to the cost the city pays for similar make ready work to its own facilities.

Pole means a wooden, concrete or steel structure owned, controlled, or otherwise operated by the city to support distribution lines and related facilities of the city, including drop, lift, light poles and streetlight poles that do not support distribution lines and related facilities.

Unauthorized attachment means any affixation of any provider attachment to the city's poles, which has not been authorized as required by this Code.

Unauthorized attachment fee means the fee to be paid by a provider for each unauthorized attachment.

(f) The only attachments authorized by this section or city law are licenses granted to a provider that is a party to the city's pole attachment license agreement for electrical facilities (wired or wireless as appropriate).

(g) The city has adopted the Electric Cities of Georgia, Inc.'s model statewide pole attachment agreements as its form of pole attachment license agreement for electrical facilities, the forms of which are on file in the clerk's office of the city.

(h) Any provider wishing to make a legal attachment to a city pole must execute the city's pole attachment license agreement for electrical facilities (wired or wireless as appropriate) and apply for a license per the terms thereof.

(i) If any attachment is identified that was not licensed under the city's applicable pole attachment license agreement for electrical facilities, it shall be deemed an "unauthorized attachment" and shall be considered a trespass upon city property.

(j) The owner of any unauthorized attachment shall pay to the city a one-time fee of $150.00 per unauthorized attachment, upon their discovery.

(k) If the owner of an unidentified attachment is readily ascertainable, they shall be given 30 days in which to enter into a pole attachment license agreement for electrical facilities with the city and apply for a license for any unauthorized attachments. Paying the unauthorized attachment fee shall be a condition of approval of any licenses.

(l) If the owner of the unidentified attachment is not readily ascertainable or neither enters into a pole attachment license agreement for electrical facilities with the city within 30 days or does not apply for a license for the unauthorized attachment, such owner will be assessed a charge equal to the make work costs incurred by the city for its removal from the city's pole in addition to the unauthorized attachment fee. The unauthorized attachment will be removed from the city pole and discarded.

(m) A utility lien is hereby established respecting all attachments.

(Ord. No. 2019-010, 10-21-19)

Editor's note(s)—Ord. No. 2019-010, adopted Oct. 21, 2019, set out provisions intended for use as §§ 78-104.1—78-104.4, 78-105.1, 78-106.1—78-106.3, 78-107.1—78-107.4, and 78-108.1. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as § 78-105.

Section 78-106—78-120. Reserved.

ARTICLE V. TELECOMMUNICATIONS TOWER AND ANTENNA ORDINANCE[50]

Section 78-121. Purposes.

This article is designed and intended to balance the interests of the residents of the city, telecommunication providers, and telecommunications customers in the siting of telecommunications facilities within the city so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carrier that does not unreasonably discriminate among providers of functionally equivalent personal wireless services and shall not prohibit or have

[50]Editor's note(s)—Ord. No. 99-09, § 1, adopted Nov. 8, 1999, did not specifically amend the Code; hence inclusion as art. V, §§ 78-121—78-135, was at the editor's discretion.

the effect of prohibiting the provision of personal wireless services, and so as to promote the city as a proactive city in the availability of personal wireless telecommunications service. To that end, this article shall:

(1) Provide for the appropriate location and development of telecommunications facilities in the city;

(2) Protect the city's built and natural environment by promoting compatible design standards for telecommunications facilities;

(3) Minimize adverse visual impacts of telecommunications facilities through careful design, siting, landscape screening and innovative camouflaging techniques;

(4) Avoid potential damage to adjacent properties from tower or antennae failure through engineering and careful siting of telecommunications tower structures and antennae;

(5) Maximize use of any new and existing telecommunications towers so as to minimize the need to construct new towers and minimize the total number of towers throughout the city;

(6) Maximize and encourage use of alternative telecommunication tower structures as a primary option rather than construction of additional single-use towers; and

(7) Encourage and promote the location of new telecommunications facilities in areas which are not zoned for residential use.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-122. Definitions.

As used in this article, the following terms shall have the meanings indicated:

Antenna means any exterior apparatus designed for the sending and/or receiving of electromagnetic waves for telephonic, radio, division, or personal wireless services. For the purposes of this article, the term "antenna" does not include any tower and antenna under 70 feet in total height which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission, any device designed for over-the-air reception of radio or television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite service, or any cable television headend or hub towers and antennae used solely for cable television services.

Director means the director of the city planning and zoning department or his/her designee.

Governing body means the city council of the City of Commerce.

Macro telecommunications facilities are those which are located on existing buildings, poles or other existing support structures and which project more than three feet above the top of the structure but no more than ten feet above the roof line, parapet or top of the structure. Macro telecommunication facilities may exceed the height limitation specified for the zoning district.

Micro telecommunications facilities are those which are located on existing buildings, poles or other existing support structures where antennae do not project more than three feet above the top of the structure and there are no more than six antennae per site.

Monopole tower means a telecommunications tower consisting of a single pole, constructed without guy wires or ground anchors.

Telecommunications facilities refers to antennae and towers, either individually or together.

Tower means a structure, such as a lattice tower, guy tower, or monopole tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, on which is located one or more antennae intended for transmitting or receiving analog, digital, microwave, cellular, telephone,

personal wireless service or similar forms of electronic communication. The term includes microwave towers, common carrier towers, and cellular telephone towers.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-123. Exclusions.

The following shall be exempt from this article:

(1) Any tower and antenna under 70 feet in total height which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission;

(2) Any device designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite service; or

(3) Any telecommunications facilities located on property owned, leased or otherwise controlled by the city provided a license or lease authorizing the telecommunications facility has been approved by the governing body.

(4) Any cable television headend or hub towers and antennae used solely for cable television services.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-124. Placement of telecommunications facilities by zoning district.

(a) In light industrial (M-1) and heavy industrial (M-2) zoning districts micro and macro telecommunications facilities shall be allowed as a use by right. Telecommunications towers designed and intended to accommodate at least one user are permitted as a use of right up to a height of 80 feet following design review by and receipt of a building permit from the director.

Telecommunications towers designed and intended to accommodate at least two users are permitted as a use of right up to a height of 100 feet following design review by and receipt of a building permit from the director. Telecommunications towers designed and intended to accommodate at least three users are permitted as a use of right up to a height of 120 feet following design review by and receipt of a building permit from the director.

(b) In central business (CBD), general commercial district (C-2), neighborhood commercial (C-1) zoning districts, micro and macro telecommunications facilities shall be allowed as a use by right following design review by and receipt of a building permit from the director. Monopole towers up to a height of 50 feet are permitted as a special use following design review by and receipt of a building permit from the director and monopole towers up at a height of 80 feet designed and intended to accommodate at least two users are permitted as a special use following design review by and receipt of a building permit from the director.

(c) In multi-family residential (R-4), mobile home park (R-5), and agricultural (AR) zoning districts, micro and macro telecommunications facilities shall be allowed as a use by right following design review by and receipt of a building permit from the director. Monopole towers up to a height of 50 feet are permitted as a special use following design review by and receipt of a building permit from the director.

(d) In single-family and two-family residential districts (R-1, R-2, and R-3) and planned unit development (PUD) zoning districts, there shall be no telecommunications facilities located. Macro telecommunications facilities shall be allowed as a special use on nonresidential structures following design review by and receipt of a building permit from the director.

(e) Telecommunications facilities outside the guidelines listed above may only be built after approval of a variance in accordance with section 10.1 of the zoning ordinance of the city as well as receipt of a building permit.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-125. Preferred and disfavored location sites.

(a) *Preferred location sites.*

(1) *Co-location sites.* Any existing telecommunications towers currently being used for transmitting or receiving analog, digital, microwave, cellular, telephone, personal wireless service or similar forms of electronic communication shall be a preferred location site regardless of the underlying zoning designation of the site, provided, however, that locations which meet this criteria shall be subject to the design and siting components of this article and co-location sites shall not become an "antenna farm" or otherwise be deemed by the director or the governing authority to be visually obtrusive.

(2) *Publicly-used structures.* Publicly-used structures are preferred locations throughout the city because they appear in virtually all neighborhoods, are dispersed throughout the city, and due to their institutional or infrastructure uses are generally similar in appearance to or readily adaptable for telecommunications facilities. Therefore, telecommunications facilities should be less noticeable when placed on publicly-used structures than when placed on commercial or residential structures. Publicly-used structures include, but are not limited to, facilities such as police or fire stations, libraries, community centers, civic centers, courthouses, utility structures, water towers, elevated roadways, bridges, flag poles, schools, hospitals, clock or bell towers, light poles and churches.

(3) *Industrial and commercial structures.* Wholly industrial and commercial structures such as warehouses, factories, retail outlets, supermarkets, banks, garages, or service stations shall be preferred locations particularly where existing visual obstructions or clutter on the roof or along a roofline can and will be removed as part of the installation of the telecommunications facility.

(4) *Mixed use buildings in high density districts.* Mixed use buildings (housing above commercial or other nonresidential space) are also preferred location sites.

(b) *Disfavored location sites.* Any single-family residential structure or site or multi-family duplex shall be a disfavored site for the location of telecommunications facilities.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-126. Requirements for telecommunications facilities.

(a) *General requirements for all telecommunications facilities.* The requirements set forth in this section shall govern the location and construction of all telecommunications facilities governed by this article:

(1) *Building codes and safety standards.* To ensure the structural integrity of telecommunications facilities, the owner of a telecommunications facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such telecommunications facilities, as amended from time to time. Owners of telecommunications facilities shall conduct periodic inspections of such facilities at least once every year to ensure structural integrity. Inspections shall be conducted by a qualified, independent engineer licensed to practice in Georgia. The results of such inspection shall be provided to the director.

(2) *Regulatory compliance.*

a. All telecommunications facilities must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate telecommunications facilities. If such standards and regulations are changed then the owners of the telecommunications facilities governed by this article shall bring such telecommunications facilities into compliance with such revised standards and regulations within the date established by the agency promulgating the standards or regulations.

b. Owners of telecommunications facilities shall provide documentation showing that each telecommunications facility is in compliance with all applicable federal and state requirements. Evidence of compliance must be submitted every 12 months.

(3) *Security.* All telecommunications facilities shall be equipped with an appropriate anti-climbing device or other similar protective device to prevent unauthorized access to the telecommunications facility.

(4) *Lighting.* No illumination is permitted on telecommunications facilities unless required by the FCC, FAA or other state or federal agency of competent jurisdiction or unless necessary for air traffic safety. If lighting is required or necessary, the director may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding uses and views.

(5) *Advertising.* No advertising is permitted on telecommunications facilities. However, a whip antenna may be allowed on any legally permitted permanent billboard or outdoor advertising sign as long as the other requirements of this article are met.

(6) *Visual impact.*

a. Telecommunications facilities shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable federal or state agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.

b. If an antenna is installed on a structure other than a tower, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Roof-mounted antennas shall be made visually unobtrusive by screening to match existing air conditioning units, stairs, elevator towers or other background.

c. Where feasible, telecommunications facilities should be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.

d. Telecommunications facilities shall not be placed in a direct line of sight with historic or scenic view corridors as designated by the governing body or by any state or federal law or agency.

e. Any equipment shelter or cabinet that supports telecommunications facilities must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. Equipment shelters or cabinets shall be screened from public view by using landscaping or materials and colors consistent with the surrounding backdrop. The shelter or cabinet must be regularly maintained.

(7) *Landscaping.*

a. Landscaping shall be used to effectively screen the view of the telecommunications facility from adjacent public ways, public property and residential property.

b. Native vegetation on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed, and vegetation to be replanted to replace that lost.

c. The director may waive or modify the landscaping requirement where lesser requirements are desirable for adequate visibility for security purposes, for continued operation of existing bona fide agricultural or forest uses such as farms, nurseries and tree farms or where an antenna is placed on an existing structure. In certain locations where the visual impact of the tower would be minimal, such as remote agricultural or rural locations or developed heavy industrial areas, the landscaping requirement may be modified or waived by the director.

(8) *Maintenance impacts.* Equipment at a transmission facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.

(9) *Principal, accessory and joint uses.*

a. Accessory structures used in direct support of a telecommunications facility shall be allowed but not be used for offices, vehicle storage or other outdoor storage. Mobile or immobile equipment not used in direct support of a telecommunications facility shall not be stored or parked on the site of the telecommunications facility.

b. Telecommunications facilities may be located on sites containing another principal use in the same buildable area.

(10) *Lot size and setbacks.*

a. The following setback requirements shall apply to all telecommunications facilities, provided however, that the director may reduce the standard setback requirements of this section if the goals of this article would be better served thereby.

1. Telecommunications towers must be set back a distance equal to the height of the tower from any off-site residential structure.

2. Towers, guy wires and accessory facilities must satisfy the minimum zoning district setback requirements.

3. Telecommunications facilities must be setback from any property line a sufficient distance to protect adjoining property from the potential impact of telecommunications facility failure by being large enough to accommodate such failure on the site, based on the engineer's analysis required in section 78-127.

b. For antennas attached to the roof or a supporting structure on a rooftop, a 1:1 setback ratio (example: ten-foot high antenna and supporting structure requires ten-foot setback from edge of roof) shall be maintained unless an alternative placement is shown to reduce visual impact.

(b) *Additional requirements for towers:*

(1) Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Personal wireless telecommunication towers shall be integrated through location and design to blend in with existing characteristics of the site to the extent practical.

(2) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(3) At a tower site the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower and related facilities to the natural setting and built environment.

(4) Towers shall not be located any closer than 1,500 feet from an existing tower unless technologically required or visually preferable.

(5) When a tower is adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.

(6) In no case shall a tower be located in the required front yard, back yard or side yard in a residential district.

(7) Towers shall not be sited where they will negatively affect historic or scenic view corridors as designated by the governing body or any state or federal law or agency or where they will create visual clutter.

(8) All towers, buildings, guy wires and any appurtenances or other devices connected with a tower shall be enclosed by metal security fencing; provided, however, the director may modify the fencing requirement of this section if the goals of this article would be better served thereby.

(9) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site will not lead to multiple failures in the event that one fails.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-127. Application procedures.

(a) *General application requirements for all building and special use permits.* Application for a building permit or special use permit for any telecommunications facility shall be made to the director by the person, company or organization that will own and operate the telecommunications facility. An application will not be considered until it is complete. The following information shall be submitted when applying for any building permit, special use permit or other permit or variance included in this article and must be submitted for an application to be considered complete:

(1) *Basic information.*

a. Site plan or plans to scale specifying the location of telecommunications facilities, transmission building and/or other accessory uses, access, parking, fences, landscaped areas, and adjacent land uses. Applicants shall submit both a paper location map and a digitized location map in a format compatible with the GIS software currently utilized by the city.

b. Landscape plan to scale indicating size, spacing and type of plantings required in subsection 78-126(a)(7).

c. A full description of the environment surrounding the proposed telecommunications facility, including any adjacent residential structures and districts, structures and sites of historic significance, streetscapes or scenic view corridors.

d. A description of anticipated maintenance needs for the telecommunications facility, including frequency of service, personnel needs, equipment needs, and traffic, noise or safety impacts of such maintenance.

e. Report from a qualified, independent engineer licensed in the state, documenting the following:

1. Telecommunications facility height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design;

2. Total anticipated capacity of the telecommunication facility, including number and types of antennae which can be accommodated;

3. Evidence of structural integrity of the tower structure; and

4. Structural failure characteristics of the telecommunications facility and demonstrate that site and setbacks are of adequate size to contain debris.

f. A definition of the area of service to be served by the antenna or tower and whether such antenna or tower is needed for coverage or capacity.

g. Information showing the proposed facility would provide the needed coverage or capacity.

h. The identity of a community liaison officer appointed by the applicant to resolve issues of concern to neighbors and residents relating to the construction and operation of the facility. Include name, address, telephone number, facsimile number and electronic mail address, if applicable.

i. Identification of the geographic service area for the subject installation, including a map showing the site and the nearest or associated telecommunications facility sites within the network. Describe the distance between the telecommunications facility sites. Describe how this service area fits into and is necessary for the service network.

j. Designation of which location preference, identified in section 78-125, the proposed facility is meeting. If the proposed location is not a preferred location 1 through 4 or is a disfavored site, describe: (a) what publicly-used building, co-location site or other preferred location sites are located within the geographic service area. Provide a list (by address with lot and block number noted) and a map at 1:200 scale of all such buildings within the service area; (b) what good faith efforts and measures were taken to secure each of these preferred location sites; (c) why each such site was not technologically, legally or economically feasible and why such efforts were unsuccessful; and (d) how and why the proposed site is essential to meet service demands for the geographic service area and citywide network.

(2) *Five year plan and site inventory.* Each application shall include a five-year facilities plan and site inventory including the following:

a. A list of all existing, existing to be upgraded or replaced, and proposed telecommunications facility sites within the city limits and within one mile of the city limits and a map showing these sites. The list must include the following information for each site:

1. Street address;

2. Tax map block and lot or other applicable ad valorem tax identification number;

3. Zoning district;

4. Type of building (commercial, residential, mixed use) and number of stories;

5. The number of antennas and base transceiver stations per site and the location and type of antenna installation (stand alone rooftop, building facade, etc.) and location of the base transceiver station installation(s);

6. The height from grade to the top of the antenna installation; and

7. The radio frequency range in megahertz, the wattage output of the equipment and effective radiated power.

b. If the applicant does not know specific future tower and antenna site locations but does know of areas where telecommunications facilities will be needed within the next five years to provide service, the applicant shall list the assessor's blocks contained within the anticipated geographic service area and identify each geographic service area with a number that will correspond to the future telecommunication facility site.

(3) *Additional information requirements for towers:*

a. If the proposed site is zoned R-1 through R-5, PUD, or AR and there are alternative sites in M-1, M-2, C-1, C-2, or CBD, applicants must justify why those alternate sites have not been proposed. The director will review with special care justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The director shall carefully weigh such claims, and the evidence presented in favor of them, against a project's negative impacts at the proposed site.

b. Applicants must identify all existing towers and all towers for which there are applications currently on file with the director. Applicants must provide evidence of the lack of space on all suitable existing towers to locate the proposed antenna and of the lack of space on existing tower sites to construct a tower for the proposed antenna. If co-location on any such towers would result in less visual impact than the visual impact of the proposed tower, applicants must justify why such collocation is not being proposed. If co-location on any such tower would increase negative visual impact, then the applicant must so state and demonstrate. The director will review with special care justifications that appeal only to undue expense and/or to undue difficulties in entering into a lease agreement. The director shall carefully weigh such claims, and the evidence presented in favor of them, against a project's negative impacts at the proposed site.

c. In all zones, applicants must demonstrate that they cannot provide personal wireless communication service without the use of a telecommunications tower.

d. The applicant shall quantify the additional tower capacity anticipated, including the approximate number and types of antennae. The applicant shall provide a drawing for each tower showing existing and proposed antennae locations. The applicant shall also describe any limitations on the ability of the tower to accommodate other uses, e.g., radio frequency interference, mass height, frequency or other characteristics. The applicant shall describe the technical options available to overcome those limitations and reasons why the technical options considered were not chosen to be incorporated. The director shall approve those limitations if they cannot be overcome by reasonable technical means.

e. The applicant must provide a utilities inventory showing the locations of all water, sewage, drainage and power lines impacting the proposed tower site.

(4) *Additional information.* The applicant must provide any other information which may be requested by the director to fully evaluate and review the application and the potential impact of a proposed telecommunications facility.

(b) *Expedited review for building permits only.* When a telecommunications facility will be a use as of right pursuant to section 78-124 and requires only a building permit and design review before it may be erected, the director will expedite review of the application and render a decision on the application within five business days after receipt of a complete application.

(c) *Special use permits.*

(1) A request for a special use permit shall be initiated by application to the director and handled in accordance with the special use permit provision of section 10.7 of the zoning ordinance. The mayor and city council may issue a special use permit under this section provided it shall have determined that all of the requirements of section 78-126 have been satisfied and, further, that the benefits of and need for the proposed tower are greater than any possible depreciating effects and damage to the neighboring properties.

(2) In granting a special use permit, the mayor and city council may impose additional zoning conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed tower or antenna on surrounding properties.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-128. Co-location.

Applicant and owner shall allow other future personal wireless service companies, including public and quasi-public agencies, using functionally equivalent personal wireless technology to co-locate antennae, equipment and facilities on a telecommunications facility unless specific technical constraints prohibit said co-location. Applicant

and other personal wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for equitable sharing of cost in accordance with industry standards.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-129. Appeals.

Appeals from any decision of the director may be taken by any person aggrieved or any official of the city affected by the decision of the director. Such appeal shall be to the board of zoning appeals pursuant to article XII of the zoning ordinance. Appeals from any decision of the board of zoning appeals shall be made to the superior court within 30 days of the decision by a writ of certiorari.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-130. Nuisances.

Telecommunications facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the limits of the city noise ordinance, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-131. Removal of antennae and towers.

All telecommunications facilities shall be maintained in compliance with standards contained in applicable building and technical codes so as to ensure the structural integrity of such facilities. If upon inspection by the director any such telecommunications facility is determined not to comply with the code standards or to constitute a danger to persons or property, then upon notice being provided to the owner of the facility and the owner of the property if such owner is different, such owners shall have 30 days to bring such facility into compliance. In the event such telecommunications facility is not brought into compliance within 30 days, the city may provide notice to the owners requiring the telecommunications facility to be removed. In the event such telecommunications facility is not removed within 30 days of receipt of such notice, the city may remove such facility and place a lien upon the property for the costs of removal. Delay by the city in taking action shall not in any way waive the city's right to take action. The city may pursue all legal remedies available to it to insure that telecommunications facilities not in compliance with the code standards or which constitute a danger to persons or property are brought into compliance or removed. The city may seek to have the telecommunications facility removed regardless of the owner's or operator's intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-132. Abandoned towers.

(a) Any telecommunications facility that is not operated for a continuous period of 12 months shall be considered abandoned, whether or not the owner or operator intends to make use of it or any part of it. The owner of a telecommunications facility and the owner of the property where the facility is located shall be under a duty to remove the abandoned telecommunications facility. If such antenna and/or tower is not removed within 60 days of receipt of notice from the city notifying the owner(s) of such abandonment, the city may remove such tower and/or antenna and place a lien upon the property for the costs of removal. The city may pursue all legal remedies available to it to insure that abandoned telecommunications facilities are

removed. Delay by the city in taking action shall not in any way waive the city's right to take action. The city may have the telecommunications facility removed regardless of the owner's or operator's intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

(b) If the owner of an abandoned tower or antenna wishes to use such abandoned tower or antenna, the owner first must apply for and receive all applicable permits and meet all of the conditions of this article as if such tower or antenna were a new tower or antenna.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-133. Pre-existing towers/nonconforming uses.

(a) All telecommunications facilities operative on November 8, 1999, shall be allowed to continue their present usage as a nonconforming use and shall be treated as a nonconforming use in accordance with section 6.1 of the zoning ordinance. Routine maintenance, including replacement with a new tower or antenna of like construction and height, shall be permitted on such existing telecommunications facilities. New construction other than routine maintenance shall comply with the requirements of this article.

(b) A telecommunications facility that has received city approval as of November 8, 1999, in the form of either a building permit or special use exception, but has not yet been constructed or placed in operation shall be considered an existing telecommunications facility so long as such approval is current and not expired.

(c) Placement of an antenna on a nonconforming structure shall not be considered an expansion of the nonconforming structure.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-134. Penalty for violation of article.

(a) Any person who attempts to erect or erects a telecommunications facility covered by this article without having first obtained the necessary building permit, special use permit or variance in the manner provided in this article shall be deemed in violation of this article. Any responsible party or other persons convicted by a court of competent jurisdiction of violating any provision of this article shall be guilty of violating a duly adopted ordinance of the city and shall be punished either by a fine not to exceed $1,000.00 or by imprisonment not to exceed 180 days or both. The court shall have the power and authority to place any person guilty of violation of this article on probation and to suspend or modify any fine or sentence. As a condition of such suspension, the court may require payment of restitution or impose other punishment allowed by law.

(b) If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this article or without obtaining that required permits, or if any building, structure or land is used in violation of this article, the city attorney, in addition to any other remedies, may institute proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate such violations. Each and every day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues may be deemed a separate offense.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-135. Coordination with federal law.

Whenever the governing authority finds that the application of this article would unreasonably discriminate among providers of functionally equivalent personal wireless services or prohibit or have the effect of prohibiting

the provision of personal wireless services, a conditional use permit waiving any or all of the provisions of this article may be granted.

(Ord. No. 99-09, § 1, 11-8-99)

Section 78-136—78-199. Reserved.

ARTICLE VI. WIRELESS FACILITIES AND ANTENNAS[51]

Section 78-200. Purpose and compliance.

(a) O.C.G.A. § 32-4-92(a)(10) authorizes the City of Commerce, Georgia (the "city") to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the city. Further, 47 U.S.C. § 253(c) provides that the city has authority to manage its public rights-of-way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the "SWFAA"), addresses the placement of small wireless facilities in the public rights-of-way of the city.

(b) The city finds it is in the best interest of the city and its residents and businesses to establish requirements, specifications reasonable conditions regarding placement of small wireless facilities, poles in the public rights-of-way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the city and to reasonably manage and protect the public rights-of-way and its uses in the city.

(c) The objective of this article is to:

  (1) Implement the SWFAA; and

  (2) Ensure use of the public rights-of-way is consistent with the design, appearance and other features of nearby land uses, protects the integrity of historic, cultural and scenic resources and does not harm residents' quality of life.

(Ord. No. 2019-011, 10-21-19)

Section 78-201. Definitions.

(a) Unless defined below, terms used in this article shall have the meanings given them in O.C.G.A. § 36-66C-2.

(b) In the event that any federal or state law containing definitions used in this article is amended, the definition in the referenced section, as amended, shall control.

(Ord. No. 2019-011, 10-21-19)

[51]Editor's note(s)—Ord. No. 2019-011, adopted Oct. 21, 2019, set out provisions intended for use as art. VI, §§ 78-200—78-230. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as art. VI, §§ 200—78-204.

Section 78-202. Permits.

(a) A permit is required to collocate a small wireless facility in the public right-of-way or to install, modify, or replace a pole or a decorative pole in the public right-of-way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

(b) Any person seeking to collocate a small wireless facility in the public right-of-way or to install, modify, or replace a pole or a decorative pole in the public right-of-way shall submit an application to the utility director for a permit. Applications are available from the utility director. Any material change to information contained in an application shall be submitted in writing to the utility director within 30 days after the events necessitating the change.

(c) Each application for a permit shall include the maximum application fees permitted under O.C.G.A. § 36-66C-5(a)(1), (a)(2) and (a)(3). Such maximum application fees shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

(d) The utility director shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. §§ 36-66C-7 and 36-66C-13.

(e) Applications for permits shall be approved except as follows:

(1) In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

a. The applicant has the right to collocate subject to reasonable terms and conditions; and

b. Such collocation would not impose technical limitations or significant additional costs.

The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(2) The utility director may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j).

(3) For applications for new poles in the public right-of-way in areas zoned for residential use, the utility director may propose an alternate location in the public right-of-way within 100 feet of the location set forth in the application, and the wireless provider shall use the utility director proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

(f) A permit issued under this article shall authorize such person to occupy the public rights-of-way to:

(1) Collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and

(2) Install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).

(g) Upon the issuance of a permit under this article, and on each anniversary of such issuance, every person issued a permit shall submit to the city the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities form the public rights-of-way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual

payment obligations under this section shall cease as of the date of the actual removal. The maximum annual payments shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

(h) Any person issued a permit shall pay the fees identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable.

(i) The city may revoke a permit issued pursuant to this article if the wireless provider or its equipment placed in the public right-of-way under that permit subsequently is not in compliance with any provision of this Code or the Georgia Streamlining Wireless Facilities and Antennas Act.

(j) If a wireless provider occupies the public rights-of-way without obtaining a permit required by this article or without complying with the SWFAA, then the city may, at the sole discretion of the city, restore the right-of-way, to the extent practicable in the reasonable judgment of the city, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the city in doing so, plus a penalty not to exceed $1,000.00. The city may suspend the ability of the wireless provider to receive any new permits from the city under this article until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the city may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(k) All accepted applications for permits shall be publically available subject to the limitations identified in O.C.G.A. § 36-66C-6(c).

(l) An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.

(m) Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2).

(n) Issuance of a permit authorizes the applicant to:

(1) Undertake the collocation, installation, modification or replacement approved by the permit; and

(2) Operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of ten years.

(o) Permits shall be renewed following the expiration of the term identified in Section 29.5-98 upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B).

(p) If an application for a permit seeks to collocate small wireless facilities on authority poles in the public rights-of-way, then the city shall, within 60 days of receipt of the completed application:

(1) Provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the proposed facility; or

(2) Notify the wireless provider that the wireless provider will be required to perform the make-ready work.

Any make-ready work performed by the city shall be completed pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(n).

(Ord. No. 2019-011, 10-21-19)

Section 78-203. Removal; relocation; reconditioning; replacement; abandonment.

(a) A person may remove its small wireless facilities from the public rights of according to the procedures of O.C.G.A. § 36-66C-5(e).

(b) In the event of a removal under Section 29.5-101, the right-of-way shall be, to the extent practicable in the reasonable judgment of the city, restored to its condition prior to the removal. If a person fails to return the right-of-way, to the extent practicable in the reasonable judgment of the city, to its condition prior to the removal within 90 days of the removal, the city may, at the sole discretion of the city, restore the right-of-way to such condition and charge the person the city's reasonable, documented cost of removal and restoration, plus a penalty not to exceed $500.00. The city may suspend the ability of the person to receive any new permits under this article until the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the city will not suspend such ability of any person that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(c) If, in the reasonable exercise of police powers, the city determines:

(1) A pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway; or

(2) Relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(1).

If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless within the time period prescribed in O.C.G.A. § 36-66C-7(1), the city make take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.

(d) The city shall recondition and replace authority poles consistent with the provisions of O.C.G.A. § 36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).

(e) A wireless provider must notify the city of its decision to abandon any small wireless facility, support structure or pole pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-7(p) regarding abandonment. The city may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

Section 78-204. Standards.

(a) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right-of-way as a permitted use: (i) upon a receipt of a permit under this article; (ii) subject to applicable codes; and (iii) so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. § 36-66C-7(h).

(1) New, modified, or replacement poles installed in the right-of-way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.

(2) Each new, modified, or replacement pole installed in the right-of-way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:

a. Fifty feet above ground level; or

b. Ten feet greater in height above ground level than the tallest existing pole in the same public right-of-way in place as of January 1, 2019, and located within 500 feet of the new proposed pole;

(3) New small wireless facilities in the public right-of-way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.

(4) New small wireless facilities in the public right-of-way collocated on a new or replacement pole under (a) or (b) may not extend above the top of such poles.

(b) A decorative pole should only be located where an existing pole can be removed and replaced, or at a new location where the city has identified that a streetlight is necessary.

(c) Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

(1) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;

(2) Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.

(3) Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any hazard to, any other use of the public rights-of-way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.

(4) Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.

(d) Notwithstanding any provision of this article to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following:

(1) Issuance of a permit under this article; and

(2) Compliance with applicable codes.

(e) Notwithstanding any provision of this article to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following:

(1) Issuance of a permit under this article; and

(2) Compliance with applicable codes.

(Ord. No. 2019-011, 10-21-19)

Chapter 82 TAXICABS[52]

Section 82-1. 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:

Open stand means locations on the streets of the city that may be used by any taxicab on a nonexclusive, first-come-first-served basis, and not by private vehicles or other public conveyances.

Taxicab means a motor vehicle used to transport passengers for a fee or fare and which is fitted with a taximeter or other device that is used to compute such fee or fare. Taxicabs shall not include limousine carriers or ride share drivers as defined in O.C.G.A. §40-1-90(1) and (3).

Taxicab company means an entity or person operating a taxicab or providing taxi services as defined in O.C.G.A. § 40-1-90(5).

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

(Ord. No. 2017-0900, 11-20-17)

Section 82-2. Doing business defined.

Any taxicab company operating a taxicab within the incorporated boundaries of the city or with an established business relationship with independent contractors operating a taxicab shall be deemed doing business in the city under this article if such person is picking up passengers in the city and accepting or soliciting any consideration, charge or fee which is determined by agreement, by mileage, by the length of time the vehicle is used or by contract for the use of any motor vehicle or other vehicle designed or used for the purpose of transporting passengers.

(Ord. No. 2017-0900, 11-20-17)

Section 82-3. Compliance.

No person or entity shall do business as a taxicab company in the city without first meeting the requirements of state law and obtaining a taxicab company business license. No person or entity shall operate a taxicab without a for-hire license endorsement or a private background check pursuant to O.C.G.A. § 40-5-39.

(Ord. No. 2017-0900, 11-20-17)

[52]Editor's note(s)—Ord. No. 2017-0900, adopted November 20, 2017, repealed ch. 82 and enacted a new ch. 82 as set out herein. Former ch. 82 pertained to vehicles for hire and derived from Ord. No. 93-008, adopted April 12, 1993.

Section 82-4. Taxicab company permit holder's responsibilities for violations.

Taxicab company business license's holder(s) are responsible for violations of this article by their employees and independent contractors, including company drivers and dispatchers.

(Ord. No. 2017-0900, 11-20-17)

Section 82-5. Taxicab company permits generally.

(a) An applicant for a taxicab company business license is required to provide information showing its qualifications on a form provided by the city clerk.

(b) No taxicab company business shall be issued to an applicant unless the applicant has a valid and current license to do business in the state and all other licenses required by the state,

(c) The business license required by the provisions of this article shall expire on December 31 of each year.

(d) All applicants must:

(1) Provide a verifiable dispatch location staffed by company agents or employees, have a published telephone number and have sufficient parking to accommodate its taxicabs when not in use;

(2) Comply with requirements of state law for transportation referral service providers, as defined in O.C.G.A. § 40-1-190(8);

(3) Provide a copy of the applicant's rate schedule and the daily hours of operation; and

(4) Provide the name, address and telephone number of a responsible individual residing in the county who will be the registered agent for the purpose of service of process or receipt of citations.

(Ord. No. 2017-0900, 11-20-17)

Section 82-6. Insurance.

All companies licensed pursuant to the provisions of this article shall maintain for the duration of their business license minimum insurance coverage as required by state law for vehicles and drivers.

(Ord. No. 2017-0900, 11-20-17)

Section 82-7. Transfer and term of permits.

No taxicab company business license is transferable; and they shall expire annually as provided in this article. If not renewed in compliance with this article, all such licenses shall expire annually and be of no further force and effect.

(Ord. No. 2017-0900, 11-20-17)

Section 82-8. Certificate.

The city manager may periodically require the owner or operator of a taxicab to submit a copy of the State of Georgia certificate of inspection for the information of the police department and the mayor and council. The certificate shall be in the form prescribed by Georgia law.

(Ord. No. 2017-0900, 11-20-17)

Section 82-9. Suspension, revocation—Grounds.

The willful violation of any ordinance of the city or the laws of the state shall be grounds for the suspension or permanent revocation of a taxicab business license as set out in this division.

(Ord. No. 2017-0900, 11-20-17)

Section 82-10. Same—Power of city manager.

When the mayor and council are not in session, the city manager shall have the authority and power, in his discretion, upon sufficient evidence or information, to suspend the business license of any taxicab owner or operator for a period of 30 days by a written order, a copy of which shall be served upon the owner or operator of a taxicab within two days after the suspension of his license, and he shall address a communication in writing to the council of his action in suspending such permit and the reason therefor.

(Ord. No. 2017-0900, 11-20-17)

Section 82-11. Same—Appeal.

The owner or operator of a taxicab shall be entitled to a hearing before the mayor and council upon application therefor, for the body to determine whether or not the suspension of his license to operate a taxicab shall be made permanent or not within the city; provided such application is filed with the city clerk within five days from the date of suspension by the city manager. If no appeal is filed then the suspension may be stopped, continued or made permanent by the council at its next regular meeting,

(Ord. No. 2017-0900, 11-20-17)

Section 82-12. Operation of taxicab during suspension.

It shall be unlawful for an owner or operator or any driver employed by such owner or operator during the period of suspension of a taxicab business license to furnish service and a violation of this section shall, upon conviction, be punished as provided in section 1-12. Such penalty shall be in addition to the suspension.

(Ord. No. 2017-0900, 11-20-17)

Section 82-13. Disposition of business license during suspension.

Any taxicab license of any owner or operator in the city which has been suspended shall be returned to the city manager, to be retained by him during the period of suspension or until the suspension is revoked and relieved by the mayor and council.

(Ord. No. 2017-0900, 11-20-17)

Section 82-14. Revocation.

If the suspension of a taxicab license is made permanent and the license is revoked by the mayor and council, the license shall be canceled by the city manager.

(Ord. No. 2017-0900, 11-20-17)

Section 82-15. Taxicab zones.

It shall be unlawful for any person to park or cause to be parked any vehicle except a taxicab within those areas where the curbing is marked by lines and where there is a sign denoting the same as a parking space for taxicabs only, such areas being reserved for the use of taxicabs only.

(Ord. No. 2017-0900, 11-20-17)

Section 82-16. Driver's license.

No taxi driver shall operate a taxicab in the city before the person who is to drive the taxicab is approved for driving a motor vehicle by the state department of public safety.

(Ord. No. 2017-0900, 11-20-17)

Section 82-17. Owner's identification, rate card displayed.

(a) Every taxicab shall display inside the cab, at a convenient place visible to passengers, a card not less than two inches in width by four inches in length, which shall have printed thereon the name, business address and telephone number of the owner and the rates charged for the use of such vehicle.

(b) Every such car shall have displayed on each side thereof the name and telephone number of the owner in letters and numerals of such size as to be readily visible to the public, and not less than three inches high.

(Ord. No. 2017-0900, 11-20-17)

Section 82-18. Fare—Refusal to pay.

It shall be unlawful for any person to use a motor vehicle operated as a taxicab and refuse to pay therefor.

(Ord. No. 2017-0900, 11-20-17)