Chapter 10

BUSINESSES*

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BUSINESS

ARTICLE I. IN GENERAL

Sec. 10-1. Street Sales Regulated.

The streets, sidewalks, alleys or any other public property of the city shall not be used for the sale of merchandise or food items of any character unless permission is granted in writing by the city manager. In no instance shall permission be granted for such general sales for a period in excess of three days, excepting properly permitted Mobile Food Service Units operating under an active Mobile Food Operating Permit and an approved municipal scheduling framework, as specified in Section 10-6 of this Chapter.

Cross reference – Streets, Sidewalks and Other Public Places, ch. 32.

Section 10-2. Peddlers, Solicitors, and General Transient Merchants.

(a) 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 or requires a different meaning:

- **General Transient Merchant.** Means a person who has no permanent place of business within the City of Elberton and who temporarily sets up or otherwise engages in business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property. This term shall strictly exclude any vendor engaged in on-site preparation, cooking, or immediate delivery of food or beverages such as Mobile Food Service Units, as specified in Section 10-6 of this Chapter.

- **Non-Commercial Door-to-Door Advocate**. Means a person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purposes of this Ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

- **Peddler.** Means a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of offering for sale, displaying for exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. This term shall strictly exclude Mobile Food Service Units.

- **Person.** Means any natural individual, organization, corporation, partnership, or similar association.

- **Professional Fundraiser.** Means any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

- **Solicitor**. Means a person who goes from house-to-house, door-to-door, business to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, foodstuffs, insurance, merchandise, other personal property, or services, or which he or she may be carrying or transporting, samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as set forth above. The purpose of this ordinance, the term solicitor shall have the same meaning as the term canvasser. This term shall strictly exclude Mobile Food Service Units.

(b) Exceptions to Definitions. For the purposes of this Section, the terms Peddler, Solicitor and General Transient Merchant shall not apply to:

(1) Non-commercial door-to-door advocates. Nothing within this Ordinance shall be interpreted
interpreted to prohibit or restrict non-commercial door-to-door advocates. The person engaging in non-commercial door advocacy shall not be required to register as a solicitor as provided herein.

(2) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.

(3) Any person who makes initial contact with other people for the purpose of establishing or
trying to establish a regular customer delivery route for the delivery of perishable food and dairy products.

(4) Any person making deliveries of perishable food and dairy products to the customers on
his or her established delivery route.

(5) Any person making deliveries of newspapers, newsletters, or other similar publications on

an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.

(6) Any person conducting the type of sale commonly known as garage sales, rummage sales, yard sales, or estate sales.

(7) Any person participating in an organized multi-person bazaar or flea market.

(8) Any person conducting an auction as a properly licensed auctioneer.

(9) Any officer of a Court conducting a court-ordered sale.

(10) Any person selling products grown, produced, cultivated or harvested on their own property.

(11) Inapplicability to Mobile Food Service Units, as specified in Section 6 of this Chapter.

Section 10-3. Compliance, Penalties, and General Permitting Framework.

(a) Compliance Unaffected. Exception from these definitions shall not, in the scope of this ordinance, excuse any person from complying with any other applicable provision or requirements that may be provided for by another city ordinance.

(b) **Penalties.** Any person violating any of the provisions of this section shall be punished as provided in Section 1-9, General Penalty, of the Code of Ordinances of Elberton, Georgia.

(c) **Permitting Framework; Exemptions.** Except as may otherwise be provided for by this ordinance, it shall be unlawful for any person to conduct business within the corporate limits of Elberton, Georgia as a peddler, solicitor, or general transient merchant without first obtaining a municipal operating permit. Solicitors need not obtain a permit but are required to register with the City as provided for herein.

Applications for a Peddlers Permit shall be made upon a form provided by the City; the City Clerk's Office shall provide applications to a desired applicant; and an application for a permit shall be made at least fourteen (14) days before the applicant desires to begin conducting his or her business;

(d) **Permit Applications.** All applications shall be truthfully answered and signed by the applicant, and all applications shall include the following information:

(1) The applicant's full legal name.

(2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
(3) The applicant's present place of residence and length of residence at such address; also, the business address of the applicant if other than the present address.
(4) Addresses of the applicant during the past three years if other than present address.
(5) A physical description of the applicant, including hair color, eye color, height, weight, and any distinguishing features or marks.
(6) Age of the applicant.
(7) Telephone numbers of applicants, including residence, business and cellular.
(8) Name and address of the person or association by whom the applicant is employed or represents and the length of time of such employment or representation.
(9) Name and address of applicant's employers during the past three years.
(10) The type of Business for which the applicant is applying for a permit.
(11) Whether the applicant is applying for a monthly, seasonal, or non-profit permit.
(12) Proposed route or location which applicant intends to conduct business.
(13) Whether the applicant has ever been convicted of a felony, a crime or moral turpitude or any other violation of any state or federal law.
(14) Social security number of applicants.
(15) Driver's license number of applicants is different from social security number.
(16) Written permission of the property owner for any location to be used by a temporary merchant.

The applicant shall submit to a criminal background investigation by the Elberton Police Department, as may be requested in the full and complete discretion of the City Clerk's Office.

(e) **Permit and License Fees.** The required fees for permits and licenses as required herein shall be as set forth from time to time by Resolution of the governing body of the City of Elberton, its duly elected and constituted City Council; in strict accordance with the cost-approximation mandates of O.C.G.A. § 48-13-9.

Section 10-4. Permit Denial; Suspension or Revocation; Hearings.

(1) Any permit issued or to be issued shall be denied, suspended or revoked by the City Manager or his designee if the applicant or holder is convicted of a violation of any of the provisions of this Ordinance; has made a false statement in the application; fails to pay the required fee; has had any previous license revoked within the past three (3) years; or has suffered any conviction within the past five (5) years of the application for any violation of any federal or state statute or regulation, or any local ordinance, which adversely reflects upon the person's ability to conduct business in a professional, honest and legal manner, examples being burglary, theft, swindling, fraud, unlawful business practices and any form of actual or threatened physical violence against another person.

(2) **Administrative Hearing Procedure & Decision:** The procedure for administrative hearings heard by the City Manager. The City Manager shall reach a decision on the matter within five (5) business days following the close of the hearing and give written notice of said decision. The decision of the City Manager shall be final unless the permit holder files a notice of appeal to the City Manager within fifteen (15) days of receiving notice of said decision.

(5) Appeals to Mayor and Council: The Mayor and Council shall hear appeals for decisions by the City Manager to deny applications for permits, as well as appeals against decisions by the City Manager to suspend or revoke permits.

(6) De Novo Standard & Timeline*:* Any such appeal to the Mayor and Council shall be subject to ***de novo*** review and shall be scheduled within thirty (30) days following the receipt by the City Manager of the notice of appeal. Applicants or permit holders shall be given written notice of the date, time, and place when the appeal will be heard, and the applicant or permit holder shall be afforded the opportunity to be heard and to present evidence. Fifteen (15) days' notice shall be deemed reasonable.

(7) **Finality of Council Decision:** The decision of the City Council shall be final unless a petition for writ of certiorari is filed in the Municipal Court within thirty (30) days of the decision being rendered.

(g) **Prohibited Activities.** No peddler, solicitor, general transient merchant, non-commercial door-to-door advocate, or any other person engaged in other similar activities shall conduct business in any of the following manners:

(1) Calling attention to his or her business or the items to be sold by means of blowing any horn or whistle, ringing any bell, or by any other noise so as to be unreasonable audible within an enclosed structure.
(2) Obstructing the free flow of traffic, either vehicle or pedestrian, on any street, sidewalk or other public right-of-way, and this shall specifically include any signage that obstructs view of traffic in any direction.
(3) Conducting business before 8:00 a.m. or after 8:00 p.m.; city-sanctioned special events may operate until 10:00 p.m., or as otherwise explicitly approved in writing by the City Manager.
(4) Failing to provide proof of permit and identification when requested.
(5) Remaining on the property of another after being requested to leave.
(6) Entering the grounds or premises of any private residence for commercial purposes without having been requested or invited to do so by the owner or occupant, for the purpose of peddling, hawking, soliciting, or selling goods, wares and merchandise, or food items. This restriction shall strictly prohibit Mobile Food Service Units from operating within residentially zoned neighborhoods unless explicitly contracted for a private catering event and parked entirely on private property with the owner's written consent.

Sec. 10-5. Solicitation Permits for Charitable Contributions.

(a) Permit Required. No person shall stand on any public highway, street, sidewalk, or alley for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle, without first obtaining a special written solicitation permit, as provided below. Any individual or organization participating in such activity without a special written solicitation permit shall be subject to citation and punishment under the provisions of this chapter and in accordance with Section 1-9, Code of Ordinances, City of Elberton, Georgia.

(b) Charitable Qualifications. Upon written application by any charitable organization registered in accordance with O.C.G.A. Section 43-17-5, or any charitable organization exempt from such registration in accordance with O.C.G.A. Section 43-17-9, the Chief of Police, with approval from the City Manager, may issue a special written solicitation permit for the purpose of soliciting contributions from vehicles traversing any public highway, street, sidewalk, or alley.

(c) Application Timeline and Content. All written applications submitted to the City Clerk must be received not less than 14 days prior to the intended activity and must contain comprehensive information regarding the request. The application must explicitly state the name and address of the charitable organization alongside verified proof of the organization's legal charitable status. Furthermore, the paperwork must detail the proposed date and time of the intended solicitation, the exact number of intended solicitors who will be present on the right-of-way, and a clear, descriptive statement of the intended charitable purpose for the solicitation.

Any failure to comply with the above-referenced application conditions shall result in the immediate denial of said application. Applications may be obtained from the City Clerk.

(d) Issuance Conditions. To obtain a valid special written solicitation permit, the request must meet the following mandatory conditions. The permit must be issued in writing and explicitly display the official signature from the City of Elberton. Additionally, the permit must clearly specify the exact time, date, and location authorized for the activity. Roadside solicitation is strictly limited by time constraints and shall only be permitted after 8:00 a.m. or before 8:00 p.m. Finally, for public safety and liability purposes, all parties actively participating under the permit must wear appropriate high-visibility safety apparel that strictly complies with national ANSI/MUTCD (American National Standards Institute/Manual on Uniform Traffic Control Devices) standards**.**

Sec. 10-6. Mobile Food Service Units.

(a) 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 or requires a different meaning:

- **Base of Operations / Commissary Kitchen:** A fixed, physical brick-and-mortar food service establishment permitted by the Georgia Department of Public Health where a Mobile Food Service Unit is supplied, cleaned, serviced, and stored.

- **Modern Mobile Food Service Unit.** Is defined by public health departments as a fully functional, commercial food establishment on wheels that must comply with strict sanitary design, temperature control, and environmental health regulations. Because they operate in changing environments without permanent utility hookups, health departments enforce rigid engineering standards to prevent foodborne illness. Unlike temporary booths/tents or fixed stands, modern mobile food units typically operate as a regulatory extension of a permitted commissary kitchen or base of operations.
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- The exemptions provided within this subsection shall not apply to Mobile Food Service Units as defined in this Chapter. All Mobile Food Service Units remain strictly subject to the municipal Mobile Food Operating Permit guidelines, safety reviews, and associated regulatory fees established herein.

(b) **Compliance, Penalties, and General Permitting Framework.**

(1) Compliance Unaffected. Exception from these definitions shall not, in the scope of this ordinance, excuse any person from complying with any other applicable provision or requirements that may be provided for by another city ordinance.

(2) **Penalties.** Any person violating any of the provisions of this section shall be punished as provided in Section 1-9, General Penalty, of the Code of Ordinances of Elberton, Georgia.

(3) **Permitting Framework; Exemptions.** Except as may otherwise be provided for by this ordinance, it shall be unlawful for any person to conduct business within the corporate limits of Elberton, Georgia as mobile food service unit without first obtaining a municipal operating permit.

(c) **Applications.** All applications shall be truthfully answered and signed by the applicant, and all applications shall include the following information:

- The applicant's full legal name.
- Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.

- The applicant's present place of residence and length of residence at such address; also, the business address of the applicant if other than the present address.
- Addresses of the applicant during the past three years if other than present address.
- A physical description of the applicant, including hair color, eye color, height, weight, and any distinguishing features or marks.
- Age of the applicant.
- Telephone numbers of applicants, including residence, business and cellular.
- Name and address of the person or association by whom the applicant is employed or represents and the length of time of such employment or representation.
- Name and address of applicant's employers during the past three years.
- The type of Business for which the applicant is applying for a permit.
- Whether the applicant is applying for a monthly, seasonal, or non-profit permit.
- Proposed route or location which applicant intends to conduct business.
- Whether the applicant has ever been convicted of a felony, a crime or moral turpitude or any other violation of any state or federal law.
- Social security number of applicants.
- Driver's license number of applicants is different from social security number.
- Written permission of the property owner for any location to be used by a temporary merchant.
- A copy of the active Georgia Department of Public Health permit or Statewide Reciprocity Authorization.
- The physical street address and county jurisdiction of the vendor's permitted Base of Operations / Commissary Kitchen.
- A certificate of active commercial general liability insurance naming the City of Elberton as an additional insured if operating on public rights-of-way.

(d) **Emergency Suspension for Public Safety Hazards:** Notwithstanding the notice provisions of subsection (3) herein, the City Manager or Code Enforcement Officer shall have the authority to **immediately suspend** a Mobile Food Service Unit permit without prior notice if an inspection reveals an imminent threat to public health, safety, or welfare. Such immediate threats include, but are not limited to:

- The suspension or revocation of the vendor's underlying Georgia Department of Public Health permit.
- An active, uncorrected commercial gas, fuel, or electrical hazard verified by the Fire Marshal.
- The unauthorized discharge of commercial grease, greywater, or hazardous waste into the municipal stormwater system or public right-of-way.

Upon ordering an emergency suspension under this subsection, the City shall provide written notice of the suspension and the specific safety violation to the permit holder

within twenty-four (24) hours, and an expedited administrative hearing shall be scheduled within three (3) business days of the suspension.

(e) **Prohibited Activities.** No Mobile Food Service Unit shall conduct business in any of the following manners:

(6) Calling attention to his or her business or the items to be sold by means of blowing any horn or whistle, ringing any bell, or by any other noise so as to be unreasonable audible within an enclosed structure.
(7) Obstructing the free flow of traffic, either vehicle or pedestrian, on any street, sidewalk or other public right-of-way, and this shall specifically include any signage that obstructs view of traffic in any direction.
(8) Conducting business before 8:00 a.m. or after 8:00 p.m.; city-sanctioned special events may operate until 10:00 p.m., or as otherwise explicitly approved in writing by the City Manager.
(9) Failing to provide proof of permit and identification when requested.
(10) Remaining on the property of another after being requested to leave.
(6) Entering the grounds or premises of any private residence for commercial purposes unless explicitly contracted for a private catering event and parked entirely on private property with the owner's written consent.
(11) Conducting business before 8:00 a.m. or after 8:00 p.m.; provided, however, that properly permitted Mobile Food Service Units operating in commercially zoned districts or at city-sanctioned special events may operate until 10:00 p.m., or as otherwise explicitly approved in writing by the City Manager.
(Ord. No. 2236, 11-6-26)

Secs. 10-7 – 10-25. Reserved.

ARTICLE II. LICENSES AND SPECIAL TAXES*

Sec. 10-26. Occupation Tax Required; Business Dealings in the City.

For the year 1995, and succeeding years thereafter, each person engaged in any business, trade, profession or occupation in the city, whether with a location in the city 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. Section 48-13-7, shall pay an occupational 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 the city. If the taxpayer has no permanent business location in the city, such business tax registration shall be show to the city clerk or this officer’s deputies or to any police officer of the city upon request.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-27. Construction of Terms; Definitions.

(a) Wherever the term "*City of Elberton"* is used herein, such term shall be construed to mean City of Elberton, Georgia," wherever the term "city" is used herein, it shall be construed to mean City of Elberton, Georgia.

(b) As used in this article, the term:

Administrative Fee. means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

Dominant Line. means the type of business, within a multiple-line business, that the greatest amount of income is derived from.

Gross Receipts. means the total revenue of the business or practitioner for the period including without limitation to the following: Total income without deduction for the cost of goods or expenses incurred; Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness; Proceeds from commissions on the sale of property, goods or services; Proceeds from fees for services rendered; and Proceeds from rent, interest, royalty, or dividend income.

Gross Receipts shall **not** include the following: Sales, Use or Excise tax; Sales returns, allowances, and discounts; Inter-organizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations as defined by 26 U.S.C. Section 1563(a)(1), or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. Section 1563(a)(2); or between or among wholly owned partnerships or other wholly owned entities; Payments made to a subcontractor or an independent agent; and Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 100 percent or more of the organization's receipts; and Proceeds from sales to customers outside the state.

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

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

Person shall be held to include. sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization, but specifically exclude charitable nonprofit organizations which utilize 100 percent of their proceeds for charitable purposes.

Practitioner of Profession or Occupation. is one who by state law requires state licensure regulating such profession or occupation.

Practitioners of Professions and Occupations. shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Regulatory Fees. means payments, whether designated as license fees, permit fees, or by another name, which are required by local government as an exercise of its police power and as a part 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. Section 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

(Ord. No. 1046, 11-6-94, Ord. No. 1077, 12-6-95)

Sec. 10-28. Administrative and Regulatory Fee Structure; Occupation Tax Structure.

(a) A non-prorated, non-refundable administrative fee of $30.00 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. Section 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 attached to this article and shall be kept on file in the office of the city clerk.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-29. 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/or upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. Section 48-13-7 based upon the following criteria:

Gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nationwide averages derived from statistics, classifications, or other information published by the U. S. Office of Management and Budget, the U S. Internal Revenue Service, or successor agencies of the United States.

(b) Occupation Tax Schedule.

(1) The tax rate determined by profitability ratios in combination with gross receipts for each business, trade, profession, or occupation shall be as follows and will be developed and updated from time to time by the Mayor and Council:

Profitability Retail	Tax Rate on Gross Receipts
Class 1	.00050
Class 2	.00055

(2) For the purposes of this article to assess occupation taxes, business classified as "manufacturing" as defined in the standard industrial classification manual, executive office of the president, office of management and budget shall be taxed based upon the following tax related based upon profitability ratios in combination with gross receipts:

Profitability Manufacturing Tax Class	Tax Rate on Gross Receipts
Class 3	.00030

This structure is established to encourage manufacturers to locate within the Corporate Limits of the city.

(c) No business or practitioner shall be required to pay more than one occupation tax for each of its location; No occupation tax will be required upon more than 100 percent of a business' gross receipts; No occupation tax will be required on receipts on which such tax has been levied in other localities or states; An occupation tax shall be required from real estate brokers, agents or companies whose officers are located outside the taxing; jurisdiction and who sell companies whose officers are located outside the taxing jurisdiction and who sell property inside the taxing

jurisdiction; An occupation tax shall not be levied in any other manner except as described in this section; Occupation taxes are limited to the gross receipts earned in the taxing jurisdiction or in the state; Out-of-state businesses with no location in Georgia shall be assessed occupation taxes based on the gross receipts of the business as defined in O.C.G.A. Section 14-13-7 (see section 10-27(2)(a) and (b) of this article) which are reasonably attributed to sales or services in the state; No business or practitioner shall be required to pay an occupation tax in excess of $1,000.00 in any given year.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-30. 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 if the business' largest dollar volume of business in Georgia is in the city and the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the jurisdiction

of the city for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located within the

jurisdiction of the city.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-31. Each line of business to be identified on business registration.

The business registration of each business operated in the local government's jurisdiction shall identify the line or 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 and that line of business being noted by the city upon the business registration form which is to be displayed by the business owner. The dominant line of business shall be notated as such.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10.32. 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-33. Professionals as classified in O.C.G.A. Section 48-13-9(c), paragraphs (1) through (18).

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

(1) The occupation tax based on profitability ratio gross receipts combined with profitability ratios as set forth in section 10-29 of this article.

(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 held on an annual basis and must be received by the office of the city clerk by January 1st of each year. If notices are not received last year's election will be used.

(Ord. No. 1046, 11-6-94; Ord No. 1077, 12-6-95)

Sec. 10-34. 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95

Sec. 10-35. Purpose and Scope of Tax.

The occupation tax levied herein is for revenue purposes only and is not 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. Sections 48-13-5 through 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-36. 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 1st of each year and shall, if not paid by April 1st 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 ten percent penalty imposed. In addition, the city shall levy interest on delinquent occupation taxes, regulatory fees, and administrative fees at a rate of 1.5 percent per month. The tax registration herein provided for shall be issued by the city clerk and Treasurer 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 the city, any of the kind of profession, trade, or calling subject to this section without having first obtained said registration, such offender shall upon conviction by the Elberton municipal court judge, be punished under the general penalty provision [section 1-9] of this Code.

(b) In addition to the above remedies, the city marshal may proceed to collect in the same manner as provided by law for tax executions.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-37. Allocation of gross receipts of business with multiple intra-or interstate locations.

For those businesses that have multiple locations inside and outside of the city where the gross receipts can be allocated to each location, the gross receipts used to determine the occupation tax assessed will be those gross receipts attributed to each city location. Where the dollar amount of gross receipts attributed locally cannot be determined in those businesses with multiple locations, the total gross receipts will be divided by the total number of locations in the city and elsewhere and allotted to those locations. Upon request, the business or practitioner with a location or office situated in more than one jurisdiction shall provide the city with the following:

(1) Financial information necessary to allocate the gross receipts of the business or practitioner; and

(2) Information relating to the allocation of the businesses or practitioner's gross receipts by other local governments.

Where the business has locations outside of the city and taxation is levied for a criterion other than gross receipts in the other local governments, the city shall not assess more than the allotted share of gross receipts for the local operation.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-38. Exemption on Grounds that business is operated for Charitable purposes.

No business on which a business registration or occupation tax is levied by this article shall be exempt from such registration or tax on the grounds that such business is operated for a charitable purpose, unless 100 percent or more of the entire proceeds from the business are devoted to such purpose.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-39. 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 licensure 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-40. Evidence of Qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualifications, certificate 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-41. Liability of Officers and Agents; Registration Required; Failure to Obtain.

All persons subject to the occupation tax levy pursuant to this article shall be required to obtain the necessary registration for such business as described in this article, 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 the city after January 1st of each year shall likewise obtain the registration herein provided for before commencing the same; and any person transacting, or offering to transact in the city, 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-42. When registration and tax due and payable; effect of transacting business when tax delinquent (optional).

(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 appropriate business registration and pay all tax and fees as provided herein before April 1st of each year, and on April 1st of each year hereafter. Every person commencing business in the city after January 1st of each year shall obtain the registration required before commencing such business. Any person transacting or offering to transact in the city any business, trade, profession or occupation without first having obtained such registration shall be subject to the penalties provided in section 10-43. The 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 clerk, and if any person, firm, or corporation whose duty it is to obtain a registration shall, after such occupation tax becomes delinquent, transact or offer to transact, in the city any of the kind of business, trade, profession, or occupation without having first obtained the registration, such offender shall be subject to the penalties provided thereof.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-43.1 Denial, suspension or revocation.

(a) Denial, suspension and revocation:

(1) Each application submitted or certificate granted hereunder shall be subject to denial, suspension or revocation for any reason set forth in subsection (b) of this section. Within 60 days of the filing of a completed application, the city manager or designee shall either issue an occupation tax certificate to the applicant or issue a written notice of intent to deny an occupation tax certificate for one or more reasons set forth in subsection (b) of this section. The decision of the city manager to deny the occupation tax certificate shall be final unless the applicant files a notice of appeal with the city manager within 30 days after the city manager's written notice of denial.

(2) Whenever the city manager or designee determines there is cause to suspend or revoke the occupation tax certificate previously issued hereunder, the city manager or designee shall give the certificate holder written notice at least 15 days prior to an administrative hearing of the time, place, purpose of the hearing, and a statement or the charge(s) upon which the administrative

hearing before the city manager or designee shall be held in accordance with this section.

(3) The procedure for administrative hearings under this chapter shall be set forth by the city manager. The city manager or designee shall reach a decision on the matter before them within ten days following the close of the hearing and give written notice of said decision. The decision of the city manager or designee shall be final unless the certificate holder files a notice of appeal with the city manager or designee within 30 days of receiving notice of said decision.

(b) An occupation tax certificate may be denied, suspended or revoked upon one or more of the following grounds:

(1) The applicant or certificate holder is guilty of fraud in the operation of the business or occupation he practices or fraud or deceit in being licensed to practice in that area;

(2) The applicant or certificate holder is engaged in the business or occupation under a false or unauthorized assumed name, or is impersonating another practitioner of a like or different name;

(3) The applicant or certificate holder is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent he is unable to perform his duties under the business or occupation;

(4) The applicant or certificate holder is guilty of fraudulent, false, misleading, or deceptive advertising or practices;

(5) The applicant or certificate holder has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A. tit. 16, Chapter 6 (O.C.G.A. § 16-6-1), or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five years immediately prior to the filing of the application. If after having been granted an occupation certificate, the applicant pleads guilty, is convicted of, or enters a plea of nolo contendere to any of the offenses listed in subsections a. through this subsection, said certificate shall be subject to suspension and revocation;

(6) The original application or renewal thereof contains materially false information, or the applicant has deliberately sought to falsify information contained therein;

(7) The business or establishment is not authorized to operate within the city, or within the zoning district within which it is located, or is otherwise not in conformity with locational requirements of any of the city's ordinances;

(8) The business or establishment is a threat or nuisance to public health, safety or welfare;

(9) The business or establishment has been found by a court of law to have been operating unlawfully;

(10) The business fails to conduct business in a professional, honest and legal manner;

(11) The business or building where business is conducted is a location where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent the activities;

(12) Any other violation of this article; or

(13) Violation of another statute, ordinance, rule, or regulation that governs the operation of the business in question.

(Ord. No. 2191, 10-5-2015)

Sec. 10-43.2 Hearings.

(a) The city council or designated hearing officer shall hear appeals to decisions by the city manager or designee to deny applications for registration, as well as appeals to decisions by the city manager or designee to suspend or revoke certificates.

(b) Any such appeal to the city council or designated hearing officer shall be subject to de novo review and shall be in accordance with subsections (c) and (d) [of this section]. A hearing before the city council or designated hearing officer shall be scheduled within 60 days following the receipt by the city manager or designee of the applicant or certificate holder's notice of appeal.

(c) Applicants or certificate holders shall be given written notice of the date, time, and place when the matter at issue will be heard by the city council or designated hearing officer. The applicant or certificate holder shall be afforded the opportunity to be heard and present evidence. Fourteen (14) days' notice shall be deemed reasonable.

(d) The procedure for hearings of the city council or hearing officer under this chapter shall be established by the mayor. Upon close of the public hearing, the city council or hearing officer shall reach a decision on the matter before it, and the decision of the city council or hearing officer shall be final unless the applicant or certificate holder applies to the county superior court by filing a petition for writ of certiorari within 30 days of the decision rendered by the city council or hearing officer.

(Ord. No. 2191, 10-5-2015)

Sec. 10-43.3 Penalties; enforcement.

(a) The city shall assess a penalty in the amount of ten percent of the amount owed for each calendar year or portion thereof for:

(1) Failure to pay occupation taxes and administrative fees when due;

(2) Failure to file a return and pay all taxes and fees by March 31 of any calendar year, when the business or practitioner was in operation the preceding calendar year; and

(3) Failure to register and pay the occupation tax within 90 days of the commencement of business.

(b) Occupation taxes and fees not paid within 90 days of the due date are subject to interest at a rate of 1½ percent per month.

(c) Payments required by the article herein may be collected in any law or in equity, or the city may cause executions to issue against the person, firm or corporation liable for the payment. Executions shall be levied and sold together with all costs thereof, by the city, or city's designee, as the county ex officio sheriff. In addition, any person whose duty it is to register any business or practice and obtain any occupation tax certificate and fails to do so, or who fails to pay the occupation tax or administrative fee required by this article, or who makes any deliberate or substantial and material false statement on an application or provides materially false information in support of an application, shall be denied an occupation tax certificate, shall be required to surrender any existing such occupation tax certificate and be deemed to have no such occupation tax certificate for purposes hereof, and shall be punished as provided in section 1-9, or as otherwise allowed by state law.

(d) If the taxes and fees required under this article remain unpaid after the due date, the business or practitioner shall not collect any gross receipts. The provisions of this subsection may be enforced by appropriate injunctive or other relief upon the application of the city to the county superior court.

(e) Practitioners of law may collect gross receipts without applying for and obtaining an occupation tax certificate. However, practitioners of law must pay the occupation tax levied herein.

(f) The city municipal court shall impose a fine for failure to pay the occupation tax, if said payment is not made in accordance with this article. Such civil fine shall not exceed $500.00 and may be enforced by the contempt power of the court.

(Ord. No. 2191, 10-5-2015)

Sec. 10-44. Revenue Collection Officer; subpoena and arrest powers.

The police department and its duly designated officer and inspectors or its successors shall be classified as deputy marshal-business inspectors with full subpoena and arrest powers in conjunction with any violation pertaining to the occupation tax ordinance for 1995 (this law) and succeeding years.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-45. Businesses not covered by this article.

The following businesses are not covered by the provisions of this article 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 land products, but not including agribusiness.

(4) Cooperative marketing associations governed by O.C.G.A. Section 2-10-105.

(5) Insurance companies governed by O.C.G.A. Section 33-8-8 et seq.

(6) Motor common carriers governed by O.C.G.A. Section 46-7-15.

(7) Those businesses governed by O.C. G.A. Section 48-5-355 (businesses that purchased carload lots of guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls).

(8) Agricultural products and livestock raised in the State of Georgia governed by O. C. G. A. Section 48-5-356.

(9) Depository financial institutions governed by O.C.G.A. Section 48-6-93.

(10) Facilities operated by a charitable trust governed by O.C.G.A. Section 48-13-55.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-46. Occupation Tax inapplicable where prohibited by law or provided for pursuant to other existing law.

An occupation tax shall not apply to the gross receipts of any part of a business where such levy is prohibited or exempted by the laws of Georgia or of the United States.

(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-47. Occupation Taxes levied on business to be transacted during current calendar year; Filing of Returns showing gross receipts during preceding calendar year.

(a) All occupation taxes levied under this article are levied on the amount of business to be transacted during the current calendar year. However, for convenience of both city and the taxpayer, each business subject to the occupation tax levied in Section 10-29 hereof shall, on or before the dates hereinafter set forth, file with the city the return hereinafter specifically provided for, showing the gross receipts of that business during the preceding calendar year. This return shall be used as the basis for making estimated payments on the occupation tax for the current calendar year. The actual and final amount of tax levied for business transacted for the current calendar year shall be paid in accordance with a final return to be made after the end of the year, in accordance with the procedure set forth here.

(b) The owner, proprietor, manager, or secretary officer of the business subject to such occupation tax of the current calendar year shall, at the end of the preceding year, and on or before January 1st of the current calendar year, file with the city manager, City of Elberton on a form furnished by such officer, a signed return setting forth the amount of gross receipts of such business for the entire preceding calendar year. This return will be used to determine the final tax for the calendar year just completed and as an estimate of the gross receipts and occupation tax for the current year.

(c) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be reported in such return. Such return shall also show a figure putting the receipts for such part of the year on an annual basis with the part-year receipts bearing the same ratio to the whole year's gross receipts as the part-year year bears to the whole year. Such figures shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-48. Filing of return showing actual gross receipts during calendar year; procedure where taxes are overpaid or underpaid (use only if tax base includes gross receipts.

(a) On or before December 31st of each year, the owner, proprietor, manager, or executive officer of the business liable for said occupation tax levied for the year may file with the city clerk of the city, on a form furnished by the city, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year.

(b) If the amount of the occupation tax for the preceding year based on the return provided for in this section and on the rate of such tax provided for in this article, is less than the amount of occupation tax therefore paid by such business based on the estimate filed pursuant to Section 10-47 hereof, the difference in such amount shall be

due and payable by the taxpayer to the city of January 15th of the current year and delinquent if not paid on or before such date.

(c) If the amount of the occupation tax for the preceding year based on the return provided for in this section and on the rate of such tax provided for in this article, exceeds the amount of occupation tax theretofore paid by such business based on the estimate filed pursuant to Section 10-47 hereof, the difference in such amount shall be refunded by the city to the taxpayer, or, if such business continues to be conducted in the city during the current year, such difference in amount may be credited by the city on the amount of occupation tax to be paid to the city by such business for the current year. This election is to be taken by the city.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-49. When Occupation Tax is due and payable; Payment Options

The amount of occupation tax shall be payable to the city, at the office of the city clerk on January 1st of each year and delinquent if not paid on or before April 1st of each year.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-50. 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 gross volume of revenue from commencing date to the end of the calendar year and such tax shall be paid in total or equal installments as follows: April 15th, October 15th, and January 15th of the succeeding year. Where a taxpayer fails to make any such quarterly payment on or before the due date for payment a ten percent penalty will be imposed for the balance of the month that payment is due and an additional one percent penalty will be imposed for each additional month of delinquency thereof.
(Ord. No, 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-51. 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, such business will pay an occupation tax in accordance with the prevailing taxing method and tax rate for the dominant line at each location.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-52. Returns Confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent or clerk of the city, or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. All contents of such return shall be confidential and open only to the officials, employees, agents or clerks of the city using such returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be classed as "employee". Nothing herein shall be construed to prohibit the publication by the city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof; or the inspection of the records by duly qualified employees of the tax department of the state, the United States, and other local governments.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-53. Inspection of Books and Records.

In any case, the city clerk of the city, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made. The city officer shall have the right to inspect the books or records for the business of which the return was made in the city, and upon demand from the city clerk such books or records shall be submitted for inspection by a representative of the city within 30 days. Failure to 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 the city, for examination by the city clerk at that officer's discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting, a penalty of 125 percent of the prime interest rate times the amount of deficient will be assessed for the period delinquent. For purposes of this section, the prim interest rate shall be that which is published by The Wall Street Journal on the first business day of the month in which the underreporting is identified.
(Ord. No. 1046, 11-6-94, Ord. No. 1077, 12-6-95)

Sec. 10-54. Tax Registration to be revoked for failure to pay tax, file returns, permit inspection of books.

Upon the failure of any business to pay such occupation tax or any part thereof before it becomes delinquent, or upon failure to make any of such returns within the time required herein, or upon failure to make a true return, failure to receive valid building inspections, or upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books as above provided, any business tax registration granted by the city under this article permitting the owner of such business to do business for the current year shall be, ipso facto, revoked. No new business tax registration shall be granted by the city for the operation of a business for which any part of the occupation tax herein provided for is at that time unpaid, or to an individual,

firm or corporation who has failed to submit adequate records as requested by the city clerk in accordance with provisions found in Section 10-48. 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 in the case of delinquent occupation tax.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55. Effect of Failure to comply with Article Provisions; continuing in business after Tax Registration Revocation.

Any persons, their managers, agents, or employees, who do business in the city after the registration for such business has been revoked as above, hereby required to make occupation tax returns, and who fail to make such returns within the time and in the manner herein provided, who refuses to amend such returns so as to set forth the truth or who shall make false returns; and any persons, their managers, agents, or employees who refuses to permit an inspection of books in their charge when the officers, 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 in the case of delinquent occupation tax. These penalties may consist of either a percentage of the amount due or a flat fee fine.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.1 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 the city, upon any tax or installment of such tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of such tax against the persons, partnership or corporation liable for such tax, which such execution shall bear interest at the rebate of ten percent per annum from the date when such tax or installment becomes delinquent, and the lien shall cover the property in the city of the persons, partnership, or corporation liable for such tax, all as provided by the ordinances and Charter of the city and the laws of Georgia. The lien of such 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 city marshal of the city upon the property of defendant located in such jurisdiction, and sufficient property shall be advertised and sold to pay the amount of such execution, with interest and costs. All other proceedings in relation thereto shall be and as is provided by ordinances and Charter of the city and the laws of Georgia, and the

defendant in such 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 property authority upon an execution issued by the city clerk against any person defaulting on the occupation tax, the person against whom 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 thought he or she had never defaulted in the payment of the taxes.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.2. Amendment, Repeal of Provision.

This article 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 assess and collect any of the taxes or other charges prescribed. Such amendment may increase or lower the amounts and tax rate 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.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.3. Application of Provisions to prior ordinances.

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 nonpayment of such tax, or for failure to pay regulatory fees provided for in such ordinance or ordinances, or failure to pay regulatory fees provided for in such ordinance or 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. 1046, 11-6-94; Ord. No 1077, 12-6-95)

Sec. 10-55.4. Enforcement of Provisions.

It is hereby made the duty of the city clerk and police department to see that the provisions of this article 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 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.5 Provisions to remain in full force and effect until changed by governing body.

This article shall remain in full force and effect until changed by amendment adopted by the 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. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.6. 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 article.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

Sec. 10-55.7. Option to establish exemption or reduction in occupation tax.

The mayor and council may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioners 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 exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons shall be set forth in the minutes of the governing authority.
(Ord. No. 1046, 11-6-94; Ord No. 1077, 12-6-95)

Sec. 55.8. Conflicts between Specific and General Provisions.

Where there is an apparent conflict in this article between specific and general provisions, it is the intention hereof that the specific shall control.
(Ord. No. 1046, 11-6-94; Ord. No. 1077, 12-6-95)

BUSINESS
ARTICLE III. FLEA MARKETS

DIVISION 1. GENERALLY

Sec. 10-56. Definitions.

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

Flea Market Operation. means any facility divided into individual sale stalls for lease where activities take place commonly known as, but not limited to, swap shops, penny markets, rummage sales, and where tangible articles are bought, sold, or exchanged for limited periods of time by individuals who lease sale stalls on a daily, weekly, or monthly basis.

Flea Market Operator. means any person who owns or controls the premises at which a flea market operation is conducted.

Flea Market Vendor means any person who engages in or conducts the activity of buying, selling or exchanging, whether on a casual or regular basis, any tangible articles, whether new, secondhand or used, in any flea market operations.

(Code 1968, Section 13-31).

Cross reference – Definitions generally, Section 1-2.

Sec. 10-57. Inspections Generally.

(a) The police department have the right to thoroughly inspect all items offered for sale or exchange on the premises where the activity permitted in this article is being conducted at any time during normal business hours. All persons in charge of such premises shall render to the police department such assistance as may be reasonably necessary to enable it to complete such inspection.

(b) In addition to the property inspection pursuant to subsection (a) of this section, the police department, the fire department, the building department and the

health department shall have the right to thoroughly inspect the flea market operation at any time during normal business hours to check for the presence of any violations of this Code or of the law of the state.
(Code 1968, Section 13-38)

Sec. 10-58. Flea Market Operator; Duties and Responsibilities.

It shall be the duty of every flea market operator to see that all vendors using the flea market operation are advised of all provisions of this article.
(Code 1968; Section 13-39)

Sec. 10-59. Flea Market Vendor; Merchandise to be held or impounded.

Articles which the police department has reasonable grounds to believe were stolen may be impounded or left with the flea market vendor under a hold order at the discretion of any member of the city police department. An article may be impounded or ordered held by the city police department for a period of 30 days pending investigation as to ownership of the article. It shall be unlawful for any flea market vendor to dispose of any property contrary to any order issued by a member of the city police department.
(Code 1968, Section 13-40)

Sec. 10-60. Character of Produce.

The sale of general merchandise of all kinds and the sale of food shall be permitted in a flea market, provided, however, that all persons selling foodstuffs or merchandise of any kind which requires an occupation license shall be licensed in accordance with the provisions of this Code and the laws of the state.
(Code 1968, Section 13-41).

Sec. 10-61. Unwholesome Foods; Sanitation.

(a) No diseased, contaminated or unwholesome meats, poultry or produce shall be brought into or offered for sale at the flea market operation.

(b) The flea market operation shall be kept in a sanitary condition, and no person shall deposit or leave any matter remnant, refuse or debris upon the premises where the activity is being conducted. The flea market operator and flea market vendors shall be jointly liable for the cleanliness of the flea market operation. The flea market operator shall make adequate and sufficient provisions for sanitary facilities on the premises where the activity is being conducted.
(Code 1968, Section 13-42)
Cross reference – Health and Sanitation, Chapter 20.

Sec. 10-62. Animals Not Permitted.

No animals except seeing eye dogs are permitted upon the premises where the activity permitted in this article is being conducted.
(Code 1968, Section 13-43)
Cross reference—Animals, Ch. 6.

Sec. 10-63. Persons and Sales excepted.

(a) The provisions of this article shall not apply to or affect the following persons or sales:

(1) Persons selling goods pursuant to an order or process of a court of competent jurisdiction;

(2) Persons acting in accordance with their powers and duties as public officials;

(3) Garage sale, and/or rummage sale which sale is hereby defined to mean the sale of any new or used personal property, which sale is conducted on or about the premises of a private residence in a residential area by the owner or occupant or with the permission of the owner or occupant, and which sale is open to the public.

(b) Religious, benevolent, charitable and civic organizations operating as nonprofit flea market vendors shall be exempt from the provisions of this article, provided all articles presented for sale or exchange have been donated.
(Code 1968, Section 13-44)

Sec. 10-64. Penalty for Violation.

Any person guilty of violating the terms of this article shall be punished in accordance with
Section 1-9.
(Code 1968, Section 13-45)

Secs. 10-65 – 10-75. Reserved.

DIVISION 2. LICENSE

Sec. 10-76. Permit required to operate Flea Market.

It shall be unlawful for any flea market operator to operate unless a permit shall be applied for,

granted and in existence, all in compliance with the provisions of this article and with all laws of the
state and the ordinances of the city.
(Code 1968, § 13-32)

Sec. 10-77. Application for License to conduct Flea Market Operation; Contents.

Any person desiring to conduct a flea market operation shall file a written application with the city clerk on a form to be furnished by the city clerk. The applicant shall accompany the application with a tender of the correct license fee as provided in Section 10-79 and shall, in addition, furnish the following:

(1) The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.

(2) The name, style, and designation under which the flea market operation is to be conducted.

(3) The business address and all telephone numbers where the business is to be conducted.

(4) The following personal information concerning the applicant, if an individual; and concerning each stockholder holding more than ten percent of the stock of the corporation, each officer and each director, if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership; and concerning the manager of other person principally in charge of the operation of the business:

(a) Name, complete residence address and residence telephone numbers.

(b) The two previous addresses immediately prior to the present address of the applicant.

(c) Written proof of age.

(d) The business experience of the individual, including but not limited to, whether or not such person has ever had a business permit or license denied, revoked, or suspended and the reason, therefore.

(e) All criminal convictions, other than minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof.

(5) Such other information as shall be deemed necessary by the city council to discover the truth of the matters required by this section to be set forth in the application.

(6) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

(7) The applicant shall furnish information as may be required by the police department, fire department and building department of the city relating to the location where the operation shall be conducted. Such information shall include the type of construction, arrangement of stalls and aisles, location of electrical wiring, location of exits location of fire equipment, location of parking lot showing the number of usable spaces location of sanitary facilities for the use of persons on the premises, as well as such other relevant information as the police department, fire department and building department may require.

(8) Written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, such declaration being duly dated and signed in the city.

(Code 1968, Section 13-33)

Sec. 10-78. Application Review; Examination of Applicant.

Copies of license application under this division shall be submitted to the police department and the fire department. These departments shall review applications for a license to conduct flea market operations and shall submit specific findings and recommendations to the mayor and council on the question of whether issuance of a license to the applicant to conduct a flea market operation at the proposed location would be injurious to the public health, safety, morals and welfare. The fire department and the police department may suggest that the mayor and council impose certain conditions and restrictions upon the grant of a license to conduct a flea market operation to safeguard the public health, safety, morals and welfare.

(Code 1968, Section 13-34)

Sec. 10-79. Issuance; Payment of Fees.

(a) The city shall not issue a license to a flea market operator to conduct a flea market operation unless the mayor and council are satisfied from the license application and the reports of the police department and the fire department that the proposed flea market operation will be conducted in such a manner that it will not injure the public health, safety, morals and welfare.

(b) Every person conducting a flea market operation in the city shall pay an annual fee. The annual fee for such license shall be an amount per booth as established from time to time by the mayor and council. The license fee shall be paid to the city clerk at the time application is made. If the license applied for is denied, the fee shall be returned to the applicant.

(c) In addition to the annual license fee, every vendor shall pay to the flea market operator a sum per day as established from time to time by the mayor and council for each space occupied by such vendor. The operator shall forward to the city on the tenth day of every month all fees collected from each vendor for the previous month.
(Code 1968, Section 13-35)

Sec. 10-80. Evidence of Insurance.

Before the issuance of a license, the flea market operator shall furnish the mayor and council evidence of insurance of a character and amount and in such form as may be determined by the mayor and council to provide for the payment of any claim for personal injuries including death, property damage or any suits arising out of or connected with the flea market operation.
(Code 1968, Section 13-36)

Sec. 10-81. Revocation.

The mayor and council shall have the authority to revoke or suspend a license issued under the provisions of this article when it finds that:

(1) The flea market operation is being conducted in violation of this article or of this
Code or of the laws of the state; or

(2) The flea market operation is operating so as to constitute a nuisance to the community.
(Code 1968, Section 13-37)

Secs. 10-82 – 10-100. Reserved.

BUSINESS

ARTICLE IV. INSURERS

Sec. 10-101. Enforcement.

The fees and taxes levied by this article may be enforced by execution in the same manner as other taxes of the city. A violation of this article shall be grounds for refusing or revoking a license, and the person responsible may be punished for violation of other city ordinances.
(Code 1968, Section 12 ½-4)

Sec. 10-102. License Fees.

(a) Insurer Generally. There is herby levied for the year 1994, and for each year thereafter an annual license fee upon each insurer doing business within the city in the amount of $50.00. For each separate business location in excess of one did not cover by paragraph (b), which is operating on behalf of insurance within the city, there is hereby levied a license fee in the amount of $50.00. For the purposes 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. Section 33-3-5).

(b) Insurers insuring certain risks at additional business locations. For each separate business location, not otherwise subject to a license fee under this article, 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 applications for insurance through a licensed agent of an insurer for insurance, the insurer shall pay an additional license fee per location for each year.

(c) Independent insurance agencies; brokers not otherwise licensed. There is hereby levied for each year 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 subsection (a) of this section, in an amount to be set from time to time by the Mayor and Council for each such location within the city.
(Code 1968, Section 12 ½-1; Ord. No. 1015, Section 1, 5-3-93; Ord. No. 1044, Section 1, 11-3-94)

Sec. 10-103. Gross premiums Tax-Life, Accident and Sickness Insurance Companies.

There is hereby levied for each year an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the city in an amount equal to one percent of the gross direct premiums received during the calendar year in accordance with O.C.G.A. Section 33-8-81. "Gross direct premiums", as used in this section, shall mean gross direct premiums as used in O.C.G.A. Section 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 10-102.
(Code 1968, Section 12 ½-2)

Sec. 10-104 – Same - All Other Insurers.

There is hereby levied for each year an annual tax upon each insurer other than an insurer transacting business in the class of insurance designated in O.C.G.A. Section 33-3-5, doing business within the city in an amount equal to 2.5 percent of the gross direct premiums received during the calendar year, in accordance with O.C.G.A. Section 33-3-8-8.2. "Gross direct premiums", as used in this section, shall mean gross direct premiums as used in O.C.G.A. Section 33-8-8.2(a).
(Code 1968, Section 12 ½-2.1)

Sec. 10-105. Administrative Provisions.

(a) License fees imposed in Section 10-102 shall be due and payable on January 1st of each year.

(b) Every insurance company doing business within the city and subject to the fees and taxes imposed in this article shall file with the city clerk, on forms prescribed, a report showing the names and addresses of its agents representing such company in the city; the location and person in charge of each and every business location within the city operated and maintained by such company; the classes of insurance written; and such other reasonable information as may be required, and, in addition, companies subject to premium tax shall furnish complete information regarding the premium received from policies insuring persons residing or located within the city. Such report shall be made over affidavit of an officer of such company. It is hereby declared to be a violation of this article for any person to knowingly give false or incomplete information on any such report. The report shall be filed at the time of paying the license fee and premium tax.

(c) The person responsible for each such insurance business location subject to the license fee under Section 10-103 shall file with the city clerk a report, on forms prescribed, showing the address of the business location; the classes of insurance written; the name of the person writing insurance at such location; the names of the companies represented; and such other reasonable information as may be required. Such report shall be made on the affidavit of the person in charge of such business location. It is hereby declared to be a violation of this article for any person to knowingly give false or incomplete information on any such report. Such report shall be filed at the time for paying the license fee.

(d) All reports required to be filed under this article shall be confidential, and the information contained therein shall be solely for the use of the officers of the city responsible for administering this article.
(Code 1968, Section 12 ½-3)

Secs. 10-106 – 10-125. Reserved.

BUSINESS

ARTICLE V. FINANCIAL INSTITUTIONS

Sec. 10-126. Business License Tax.

Pursuant to O.C.G.A. Section 48-6-93, there is levied for each year an annual business license tax upon the state and national banking associations, federal savings and loan associations, state building and loan associations, at the rate of 0.25 percent of the gross receipts of the institutions listed in this section. Notwithstanding any other provision of this article, a minimum amount of business license tax due from any depository financial institution pursuant to this article shall be a yearly fee set from time to time by the mayor and council.
(Code 1968, Section 18-20)

Sec. 10-127. Gross Receipts Defined; Items to be included and deducted in the Calculation of Gross Receipts.

For the purposes of this article, the term “gross receipts” shall mean the total amount of revenue generated from the sources itemized in this section during the calendar year immediately preceding the date on which the tax imposed by this article is due:

(1) Banks. Items to be included in the calculation of gross receipts with respect to banks are as follows:

(a) Interest and fees on loans, less any interest collected on those portions of loans sold and serviced by others;

(b) Interest on balances with other depository financial institutions;

(c) Interest on federal or correspondent funds sold and securities purchased under resale agreements:

(d) Interest on other bonds, notes and debentures, excluding interest on obligations in the state or its political subdivisions and obligations on the United States;

(e) Dividends on stocks;

(f) Income from direct lease financing;

(g) Income from fiduciary activities;

(h) Service charges on deposit accounts;

(i) Other service charges, commissions and fees; and

(j) Other income.

(2) Savings and Loan Associations. Items to be included in the calculation of gross receipts with respect to savings and loan associations are as follows:

(a) Interest on mortgage loans less any interest collected on those portions of loans sold in service for others;

(b) Interest on mortgages, participation, or mortgage-backed securities;

(c) Interest on real estate sold on contract;

(d) Discounts on mortgage loans purchased;

(e) Interest on other loans, excluding interest on obligations of the state or its political subdivisions and obligations of the United States;

(f) Interest and dividends on investments and deposits;

(g) Loan fees;

(h) Loan servicing fees;

(i) Other fees and charges;

(j) Gross income from real estate owned operations;

(k) Net income from office building operations;

(l) Gross income from real estate held for investment;

(m) Net income from service corporations and subsidiaries;

(n) Miscellaneous operating income;

(o) Profit on sale of real estate owned, investment securities, loans, and other assets; and

(p) Miscellaneous non-operating income.

(3) Deductions. The following items shall be deducted from gross receipts calculated pursuant to subsections (1) and (2) of this section.

(a) An amount equal to the amount of interest paid on all liabilities for the period;

(b) An amount equal to any income derived from the authorized activities of any domestic international banking facility operating pursuant to O.C.G.A. Section 7-1-730 et seq;

(c) An amount equal to any income arising from the conduct of a banking business with persons or entities located outside of the United States, its territories or possessions;

(d) An amount equal to a depository financial institution's gross income which is taxed under the tax laws of a state other than Georgia; and

(e) To the extent that any deductions are made pursuant to subsections (3) b; (3) c, and (3) d of this section, any deductions taken under subsection (3) a of this section shall be reduced by the same proportion that the deductions in subsection (3)b through (3)d of this section bear to the gross receipts of the depository financial institution as calculated before making any deductions pursuant to subsections (3)a through (3)d of this section.

(Code 1968, Section 18-21)

Cross Reference – Definitions generally, Section 1-2.

Sec. 10-128. Due date; filing of return.

(a) Each depository financial institution within the city shall file a return of its gross receipts with the city 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. Section 48-6-93(d). The tax levied pursuant

to this article shall be assessed and collected based upon the information provided in the return.

(b) The due date of taxes levied by this article shall be April 1st of each year. (Code 1968, Section 18-22)

Secs. 10-129-10-150. Reserved.

BUSINESS

ARTICLE VI. TELEPHONE COMPANIES

Sec. 10-151. Occupational License Tax levied on Telephone Companies.

(a) Each telephone company operating in the city shall pay an occupational license tax, in addition to the flat business license, in the amount of three percent of the recurring local service revenue received by such telephone company, from subscribers located within the city. The occupational license tax shall be paid in quarterly installments, each of which shall be due on or before the last day of the second month following the end of each calendar quarter and shall be based on recurring local service revenues billed between the effective date of the ordinance from which this section derives and the end of the calendar quarter in which such effective date falls. Any amount of license tax, other than the flat business license, previously paid and absorbed by a telephone company which is applicable to any period subsequent to the effective date of this section shall be credited against the amounts imposed in this section.

(b) The term “recurring local service revenue” shall mean:

(1) Monthly charges for local exchange service include:

(a) Charges for additional listing and joint users;

(b) The guaranteed portion of the charge for semipublic pay station services;

(c) Charges for local message rate service, including mobile service local messages; and

(d) Subscriber station revenues from teletypewriter exchange service.

(2) Charges for Morse transmission, signaling, data transmission, remote metering and supervisory control, where both terminal points are within the city limits.

(3) All charges for local private line services, except audit and video program transmission services, where both terminals of the private line are within the city limits.

(c) Nothing contained in this section shall authorize the transmission of audio or video programs to customers by CATV companies.

(Code 1968, Section 13-15)

Sec. 10-152. Due compensation from telephone companies with end-user retail customers within the city.

(a) The city hereby requires due compensation of 3 % of actual recurring local service

revenues, as defined in paragraphs (8) and (9) of subsection (b) of Section 46-5-1 of the Official Code of Georgia Annotated; provided, however, that any company which pays in excess of 3 percent of actual recurring local service revenues pursuant to an existing franchise agreement shall continue to pay in accordance with the agreement until the franchise agreement or December 31, 2012, whichever occurs first, and any company which pays in excess of 3 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 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. 2094, Section 1, 10/1/2001, amended 2154, Section 1, 1/9/2009, *Supplement 22*)

Sec. 10-153. Authorized designee.

The city manager or his 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 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 ordinance.

(4) Provide a coordination function between a telephone company and all city departments on any matter relating to the amended law and this ordinance.

(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. 2094, Section 1, 10/1/2001, amended 2154, Section 2, 1/9/2009, *Supplement 22*)

Secs. 10-154 – 10-170. Reserved

BUSINESS

ARTICLE VII. ADULT ENTERTAINMENT*

Sec. 10-171. Purpose

The purpose of this article is to regulate certain types of businesses including, but not limited to, adult entertainment establishments, to the end that the many types of criminal activities frequently engendered by such businesses 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 article 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.

(Ord. No. 1078, Section 1, 12-4-05)

***Editor's note** – Sections 1-32 of Ord. No. 1078, adopted December 4, 1995, added a new section 2820. To keep in consistency with the Code, Sections 1-32 of said ordinance*

have been designated as Sections 10-171 – 10-202 and included herein at the editor's discretion.

Sec. 10-172. Definitions.

The following terms used in this section defining adult entertainment establishments shall have the meanings indicated below:

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.

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.

Adult Dancing Establishment. means a business that features dancers displaying or exposing specified anatomical areas.

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.

Adult massage parlor. means a sexually oriented commercial enterprise whose major business is 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.

Adult mini-motion picture theater. means an enclosed building with a capacity of less than 50 persons used for commercially presenting material distinguished or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade. means any place to which the public is permitted or invited wherein coins-or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines or 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.

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.

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 specific sexual activities or specified anatomical areas of 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.

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 medial practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engaged in sexual therapy.

Erotic Dance Establishments. 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 anatomical areas.

Escort Bureau; Introduction Services. means any business, agency or persons who for a fee, commission, hire, reward, or profit, furnished or offer to furnish names of person, 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.

Good Moral Character. means a person that is of good moral character according to this section if that 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.

Minor. means, for the purposes of this section, any person who has not attained the age of 18 years.

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, picquerism, sapphism, zooerasty; or

(2) Clearly depicted human genitals in a state of sex stimulation, arousal for tumescen; 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.

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.

(Ord. No. 1078, Section 2, 12-4-95)

Sec. 10-173. 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 1st 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 maintain 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 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.mn Sunday. No licensee shall permit his or her place of business to be open on the 25th of December.

(g) No erotic dance establishment 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 3.5-foot candles per square foot.

(o) If any portion or subparagraph of this article 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.
(Ord. No. 1078, Section 3, 12-4-95)

Sec. 10-174. Certain Activities Prohibited.

No person, firm, partnership, corporation nor 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.
(Ord. No. 1078, Section 4, 12-4-95)

Sec. 10-175. 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 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.
(Ord. No. 1078, Section 5, 12-4-95)

Sec. 10-175. 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 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.
(Ord. No. 1078, Section 5, 12-4-95)

Sec. 10-176. Operation of Unlicensed Premises unlawful.

It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, adult mini motion 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.
(Ord No. 1078, Section 6, 12-4-95)

Sec. 10-177. Admission of Minors unlawful.

It shall be unlawful for a licensee to admit or permit the admission of minors within a licensed premises.
(Ord. No. 1078, Section 7, 12-4-95)

Sec. 10-178. Sale to Minors 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.
(Ord. No. 1078, Section 8, 12-4-95)

Sec. 10-179. Location.

No adult business or use restricted hereunder shall be located:

(1) Within 1,000 feet of any parcel of land upon which is either named or used for residential uses or purposes;

(2) 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;

(3) Within 1,000 feet of any parcel of land upon which another establishment regulated or defined here under is located;

(4) Within 1,000 of any parcels of land upon which any other establishment selling alcoholic beverages is located;

(5) On less than three acres of land containing at least 100 feet of road frontage.

For the purposes of this section, distance shall be airline measurement from property lines, 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.
(Ord. No. 1078, Section 9, 12-4-95)

Sec. 10-180. 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 of Employment*. Before any person may work on a licensed premises, he or she shall file a notice with the licensing officer or 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 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 hearing. The decision of the licensing officer after hearing may appeal 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, laws and regulations of state, 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.
(Ord. No. 1078, Section 10, 12-4-95)

Sec. 10-181. Application for Permit.

(a) Any person, association, partnership or corporation desiring to obtain permits to operate, engage in, conduct or carry on any adult entertainment establishment shall make application to the city manager or his or her designated representative. Prior to submitting such application, a nonrefundable fee, established by the council, shall be paid to the city clerk to defray, in part, the cost of investigation and report required by this section. The city clerk 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.
(Ord. No. 1078, Section 11, 12-4-95)

Sec. 10-182. Application Contents.

Each application for an adult entertainment establishment permit shall contain the following information:

(1) The full true name and any other names used by the applicant;

(2) The present address and telephone number of the applicant;

(3) 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;

(4) Acceptable written proof that the applicant is at least 18 years of age;

(5) The applicant's height, weight, color of eyes and hair and date and place of birth;

(6) Two photographs of the applicant at least two inches by two inches taken within the last six months;

(7) 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 hold more than five percent of the shares of corporate stock outstanding;

(8) 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 therefore, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such convictions;

(10) 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 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;

(11) 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.

(12) 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.

(13) 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.

(14) 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 other disposition, including any fine or

sentence imposed and whether terms of disposition have been fully completed;

(15) The city shall require the individual applicant to furnish fingerprints of the applicant;

(16) If the applicant is a person doing business under a trade name, a copy of the trade name is 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;

(17) 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;

(18) Address of the premises to be licensed;

(19) 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;

(20) A plat by a registered engineer, licensed by the state, 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;

(21) Each application for an adult entertainment establishment license shall be verified and acknowledge under oath to be true and correct by:

(a) If the applicant is an individual, the individual;

(b) If by partnership, by the manager or general partner;

(c) If a corporation, by the president of the corporation;

(d) If any other organization or association, by the chief administrative official.

(Ord. No. 1078; Section 12, 12-4-95)

Sec. 10-183. Applicant to Appear.

The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear at the city and produce proof that a nonrefundable application fee, established by resolution of the council, has been paid and shall present the application containing the aforementioned and described information.
(Ord. No. 1078, Section 13, 2-4-95)

Sec. 10-184. 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 council may grant the permit if it finds:

(1) The required fee has been paid;

(2) The application conforms in all respects to the provisions of this section;

(3) The applicant has not knowingly made a material misrepresentation in the application;

(4) The applicant has fully cooperated in the investigation of his or her application;

(5) 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 abovementioned 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 abovementioned offenses or any crime involving dishonesty, fraud, deceit, or moral turpitude;

(6) 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;

(7) 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;

(8) The applicant is at least 21 years of age;

(9) That the applicant, his or her employee, agent, partner, director, officer, stockholder or manager has not within five years of this 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.

(10) 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;

(11) 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;

(12) That the grant of such license will not cause a violation of this section or any other ordinance or regulation of the city, State of Georgia or the United States;

(13) Any other inquiry deemed necessary or desirable by the city to insure the health, safety, and welfare of the citizens of the city or the preservation of its neighborhoods.

(Ord. No. 1078, Section 14, 12-4-95)

Sec/ 10-185. 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 employed, 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.

(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.
(Ord. No. 1078, Section 15, 12-4-95)

Sec. 10-186. Permit Refusal – Appeal.

If the city, following investigation of applicant, deems that the applicant does fulfil the requirements as set forth in this section, it shall notify the city clerk of such opinion and, within 30 days of the date of application, provide copies of the investigation report to the city clerk. The city clerk 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 council.
(Ord. No. 1078, Section 16, 12-4-95)

Sec. 10-187. 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 council.
(Ord. No. 1078, Section 17, 12-4-95)

Sec. 10-188 – Same --Nontransferable.

No adult entertainment establishment permit may be sold, transferred or assigned by a permittee, or by law, to any other person or persons. Any such sale, transfer or assignment or attempted sale, transfer or 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 [permit] or portion 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.
(Ord. No. 1078, Section 18, 12-4-95)

Sec. 10-189. Change of Location or Name.

(a) No adult entertainment establishment shall move from the specified location on its permit until a change of location fee, established by resolution of the 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 of regulations of this section.
(Ord. No. 1078, Section 19, 12-4-95)

Sec. 10-190. 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. The notice of appeal shall be addressed to the 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 council and the name and address of the applicant.

The clerk shall place the appeal on the agenda of the next regular council meeting occurring not less than five days nor more than 30 days after receipt of the application for council action.
(Ord. No. 1078, Section 20, 12-4-95)

Sec. 10-191. Same – Council determines Procedures.

When an appeal is placed on the council agenda, the council may take either of the following actions:

(1) Set a hearing date and instruct the city clerk to give such notice of hearing as may be required by law.

(2) 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 city 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.

(Ord. No. 1078, Section 21, 12-4-95)

Sec. 10-192. City Council Hearing.

Whenever the city clerk has scheduled an appeal before the council, at the time and date set, the council shall receive all relevant testimony and evidence from the permittee, from interested parties and from city staff. The council may sustain, overrule or modify the action complained about. The action of council shall be final.
(Ord. No. 1078, Section 22, 12-4-95)

Sec. 10-193. Power 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.
(Ord. No. 1078, Section 23, 12-4-95)

Sec. 10-194. Rules of evidence inapplicable.

The 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.
(Ord. No. 1078, Section 24, 12-4-95)

Sec. 10-195. 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 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 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, with additional copies furnished to the city manager and chief of police.

The city clerk shall place the hearing officer's report on the agenda of the next regular 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.
(Ord. No. 1078, Section 25, 12-4-95)

Sec. 10-196. Same – Action by Council.

The council may adopt or reject the hearing officer's decision in its entirety or may modify the proposed recommendation. If the council does not adopt the hearing officer's recommendation, it may:

(1) 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.

(2) Decide the case upon a review of the entire record before the hearing officer with or without taking additional evidence.

(Ord. No. 1078, Section 26, 12-4-95)

Sec. 10-197. 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 dollars 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.
(Ord. No. 1078, Section 27, 12-4-95)

Sec. 19-198. 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, or 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 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.
(Ord. No. 1078, Section 28,12-4-95)

Sec. 10-199. 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. 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 collection permits.
(Ord. No. 1078, Section 29, 12-4-95)

Sec. 10-200. 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.
(Ord. No. 1078, Section 30, 12-4-95)

Sec. 10-201. 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 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.
(Ord. No. 1078, Section 31, 12-4-95)

Sec. 10-202. Abatement as Sanitary Nuisance.

A licensed premises or any part thereof may be abated as a sanitary nuisance.
(Ord. No. 1078, Section 32, 12-4-95)

Secs. 10-203—10-230. Reserved.

BUSINESS

ARTICLE VIII. SECONDHAND DEALERS, DEALERS IN PRECIOUS METALS AND GEMS, AND PAWNBROKERS

Sec. 10-231. Penalty.

Any person violating any of the provisions of this Article shall be punished as provided in Section 1-9 of this Code.
(Ord. No. 2184, 06-06-14)

Sec. 10-232. 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:

Accepted identification. means an official document, most commonly in the form of a plastic coated/sealed card, issued for purposes of identification or driver's license. These documents must be issued by one of the 50 states or a branch of the U.S. military, i.e. Army, Navy, Air Force, Marines, Coast Guard, or current State of Georgia and counties of Georgia probation and parole cards. The identification must at a minimum bear a true photograph of the person presenting it, date of birth, description of the person, and an address for the person.

Acquire. means to purchase, exchange, transfer, collect, or otherwise obtain physical possession of regulated secondhand items from another person or entity not licensed as a secondhand dealer.

Dealer in precious metals and gems. means:

(1) Any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers, manufacturers' representatives, or other dealers in precious metals or gems; or

(2) Any person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers, manufacturers' representatives, or other dealers in precious metals or gems where such purchase is for resale in its original

form or as changed by remounting, melting, re-forming, remolding, or recasting or for resale as scrap or in bulk.

Deceptive business practice. means:

(1) Any use or possession of a false weight or measurement, or any other device for falsely determining or recording any quality or quantity in connection with any scale or service;

(2) Any sale of, offer to sell or delivery of less than the represented quality or quantity;

(3) Any attempts to take more than the represented quantity of any commodity, when as buyer or broker, such person furnishes the weight or measure;

(4) Any service which is of an unreasonably lesser quality than the service offered or represented;

(5) Any other practice designated as unlawful by O.C.G.A. section 10-1-300, et. seq.;

(6) Any other fraudulent business transaction which is made punishable by the laws of the State of Georgia.

Employee. means any person who works for a secondhand dealer, whether on a part-time or full-time basis, regardless of whether remuneration is received or not, and regardless of whether such person is treated as a W-2 employee or a Form 1099 contractor.

Gems. means any precious or semi-precious stone which is cut and polished.

Interest in a secondhand dealership. means any full or part ownership if the person involved, or any member of his or her family, is the outright owner of the secondhand dealership; a co-owner of the secondhand dealership; a stockholder in any corporation organized for pecuniary gain which owns all or part of the secondhand dealership; a stockholder, member, partner or individual with an ownership interest in any corporation, partnership, limited liability company or other legal entity organized for pecuniary gain which owns all or any part of the secondhand dealership.

Minor. means any person who has not attained the age of 18 years.

Numismatic coins. means coins whose value as collectors' items exceeds the value of the content of the precious metals in the coins.

Occupation tax certificate. means permission to operate a business pursuant to Chapter 10, Article II of the Code of the City of Elberton, Georgia.

Pawnbroker. means any person engaged in whole or in part in the business of lending money on the security of pledged goods, or in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or in the business of purchasing tangible personal property from persons or sources other than manufacturers or licensed dealers as a part of or in conjunction with the business activities described in this paragraph.

Pawnshop. means the physical location at which a pawnbroker is licensed to operate.

Pawn transaction. means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods may be redeemed or repurchased by the pledgor or seller for a fixed price within a fixed period of time

Permit. means permission to be employed or work in a secondhand dealership or to be a secondhand dealer.

Person. means an individual, partnership, limited liability company, corporation, joint venture, trust, association, or any other legal entity however organized.

Pledged goods. means tangible personal property, including, without limitation, all types of motor vehicles or any motor vehicle certificate of title, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction. However, for purposes of this Code section, possession of any motor vehicle certificate of title which has come into the possession of a pawnbroker through a pawn transaction made in accordance with law shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker shall retain physical possession of the motor vehicle certificate of title for the entire length of the pawn transaction but shall not be required in any way to retain physical possession of the motor vehicle at any time. “Pledged goods” shall not include securities, or printed evidence of indebtedness.

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

Regulated secondhand items. means the following goods:

(1) Precious metal or gems;

(2) Goods made from precious metals or gems;

(3) Pledged goods; or

(4) Tangible property acquired by a pawnbroker.

Secondhand dealer. means any person whose business, as a whole or in part, is dealing in acquiring, purchasing, selling, or trading regulated secondhand items, and such term expressly includes dealers in precious metals and gems and pawnbrokers.

Secondhand dealership. means the physical location at which a secondhand dealer is licensed to operate, and such term expressly includes pawnshops.

Seller. means the person from whom a secondhand dealer or employee acquired secondhand items or the person from whom a pawnbroker acquired pledged goods.

(Ord. No. 2184, 06-06-14)

Sec. 10-233. Annual permit required; other violations

No person shall acquire any regulated secondhand items or transfer any previously acquired regulated secondhand items as a secondhand dealer, or become an employee of a secondhand dealer, without a permit. It shall be unlawful for any secondhand dealer or employee to:

(1) Make any false statement in application for a permit required by this Article; or

(2) Make any false entry in any record book, ledger or form required by this Article.

(Ord. No. 2184, 06-06-14)

Sec. 10-234. Exempt Transactions

The following transactions are exempt from the provisions of this Article:

(1) Transactions in which a non-profit entity, exempt from federal income tax pursuant to 26 U.S.C. Sections 501(c), 501(d), or 501(e), is a party;

(2) Transactions occurring at one-day auctions and/or permitted yard sales, unless a dealer in precious metals or gems or pawnbroker is a party to such transaction;

(3) Transactions occurring at a licensed antique store whose course of business is dealing mainly in antiques only and are not operating as a pawnbroker or dealer in precious metals, gems, and/or firearms; and

(4) Transactions involving numismatic coins, unless a pawnbroker is a party to such transaction.

(Ord. No. 2184, 06-06-14)

Sec. 10-235. Fixed physical location

No secondhand dealer or employee may operate except at a fixed permanent physical business location with an occupation tax certificate from the City. No secondhand dealer or employee may operate as a peddler or transient merchant. Permits acquired under this Article are valid only for the location stated on the permit and said permit is not transferable from one location to another.

(Ord. No. 2184, 06-06-14)

Sec. 10-236. Secondhand dealer and employee permits

(a) Qualifications. All secondhand dealers and employees, as defined herein, shall be not less than 18 years of age. Any person who has been convicted of or pled guilty to any felony, any crime involving theft or fraud, or any crime against property under the laws of this state, any other state of the
United States, or any federal law shall not be eligible for a secondhand dealer or employee permit under this Article until ten (10) years after the completion by said person of the subject sentence. No convicted felon may have possession or come in contact with any firearm pursuant to OCGA: 16-11-131 regardless of the time from the date of conviction.

(b) Disclosure. Every secondhand dealer and employee must disclose any ownership or interest in any other secondhand dealership, including any other pawnshop(s), whether it is located locally or out-of-state and must disclose the nature of such ownership or interest.

(c) Approval of employment. Before any person may work on the premises of a secondhand dealership, he shall file an application with the City Clerk setting out the information required in subsections (a) and (b) of this Section and submit an application fee as approved from time to time by the City Council. Each applicant must be fingerprinted by the Elberton Police Department. The City shall have 45 days to investigate the information submitted by the applicant. If the application information

conforms to the requirements of this Article, the City shall approve the applicant for a permit authorizing the person to be employed at a secondhand dealership. Upon such approval, the applicant may begin working on the regulated premises. It shall be the duty of the secondhand dealer to assure compliance with the provisions of this Section. Every permit holder is required to notify the City of any change in information or circumstances which occurs after the original approval was granted. If approval is denied, the applicant may, within fifteen (15) days of the denial, appeal in writing to the City Manager for reconsideration pursuant to the provisions of this Article.

(d) Suspension, revocation of the occupation tax certificate or permit. Conviction of violating the provisions of this Article or any other ordinance of the City, rules or regulations of the City, or conviction of any felony or any crime involving theft, fraud or a crime against property shall subject the employee to suspension or revocation of the permit, and in the case of an owner or secondhand dealer, shall subject the party to suspension or revocation of any permit authorized under this Article and the occupation tax certificate for the secondhand dealership. Suspension and revocation procedures shall be in accordance with the rules and regulations established by this Article.

(e) Independent contractors. For the purpose of this Article, independent contractors shall be considered as employees and shall be permitted as employees, regardless of the business relationship with the owner or occupation tax certificate holder of any secondhand dealership.
(Ord. No. 2184, 06-06-14)

Sec. 10-237. Application for permit.

(a) Any person, including any association, partnership, limited liability company, corporation, trust, joint venture or other legal entity, desiring to obtain a permit to operate as a secondhand dealer as required by this Article shall make application to the City through its designated representative. Additionally, if such person desires to operate as a pawnbroker, they must specifically provide for same in such application.

(b) Each application for a permit to operate as a secondhand dealer or as an employee for a secondhand dealer shall contain the following information:

(1) The applicant's full true and legal name(s) and any other aliases or name changes used in the last ten (10) years.

(2) The present address and telephone number of the applicant.

(3) Acceptable written proof that the individual applicant is at least 18 years of age.

(4) Business, occupation or employment history of the applicant for the ten (10) years immediately preceding the date of the application.

(5) The secondhand dealer permits history of the applicant, including any other permits authorizing such applicant to operate as a dealer in precious metals or gems or as a pawnbroker, and whether, in previous operations in this or any other City, state or territory, the applicant has had such permit revoked or suspended. If such permit has been revoked or suspended, the applicant must state the reason, and the business activity or occupation subsequent to such action of suspension or revocation.

(6) Whether the applicant is seeking to operate as a pawnbroker.

(7) 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 place and date of incorporation, and the names and addresses of each of its current officers and directors. If the applicant is a limited liability company, the application shall set forth the name, residence, address and dates of birth of the members, and it shall furnish a copy of its certificate filed with the Secretary of State. If the applicant is a partnership, the application shall set forth the name, residence, address and dates of birth of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation(s), limited liability company(s) or partnership(s) shall designate one of its officers, members or general partners to act as its responsible managing officer. Such designated applicants shall complete and sign all application forms required of an individual owner under this Article, but only one application fee shall be charged. No secondhand dealership shall operate under any name other than the name of the applicant and the name of the business as specified on the permit.

(8) Whether the applicant has been convicted of or pled guilty to, in a court of competent jurisdiction, any felony, any crime involving theft or fraud, or any crime against property within the last ten (10) years. The pleading of nolo contendere shall be considered as a conviction for the purposes of this provision.

(9) If the applicant is doing business under a trade name, a copy of the trade name, properly recorded, must be provided. If the applicant is a corporation, a copy of authority to do business in Georgia, including articles of incorporation, trade name and the last annual report, if any, must be provided.

(10) Address of secondhand dealership to be regulated.

(11) Whether the premises are owned or rented.

(12) Nature and character of the business to be conducted, including whether the applicant intends to operate as a dealer in precious metal and gems or as a pawnbroker.

(13) Each application for a secondhand dealership or employee permit shall be verified and acknowledged under oath to be true and correct by the applicant and all ownership if for a secondhand dealership permit.

(14) Any ownership interest in any other secondhand dealership or pawnshop, whether it is located locally or out-of-state and the nature of such ownership interest.

(15) Statement that there are no fees, taxes, fines, utilities or other charges due to the City from
the applicant.

(16) Any other information that may be required by the City, including any information required by State law, including, but not limited to, the source of financing for the business operation and proof of legal residence.

(c) Proof of an existing and valid occupation tax certificate from the City for the location of the proposed secondhand dealership, if not applied for concurrently.

(d) The City shall have 45 days to investigate the application and background of the applicant.

(e) Upon completion of the review of the application by the City, the permit shall be granted by the City Manager or designee if the application conforms to all the requirements of this Article. If the application does not conform to all the requirements of this Article, the City Manager or designee shall deny said application by sending a written denial to the applicant(s) by certified mail, return receipt requested, stating the reasons for same and informing the applicant(s) of their right to appeal said denial within thirty (30) days of the denial letter pursuant to the terms of this Article.
(Ord. No. 2184, 06-06-14)

Sec. 10-238. Reasons for denial, suspension or revocation of the permit.

The City Manager or designee may reject an application for a permit, or suspend or revoke a permit for the following reasons:

(1) The required fees or taxes have not been paid.

(2) The secondhand dealership is, or will be, located within 500 feet, front door to front door, by the shortest walking route, of another secondhand dealership.

(3) Application does not conform to all the provisions required by the Article.

(4) The owner/employee has failed to fully cooperate with the investigation required by this
Article.

(5) Any owner/employee has had any license or occupation tax certificate issued under the police powers of any county, municipality, or other governmental subdivision involuntarily suspended or revoked within the last ten (10) years for any reason whatsoever.

(6) The owner/employee, as a previous holder of a license or occupation tax certificate to operate a secondhand dealership has violated any law, regulation or ordinance relating to the business within a ten (10) year period immediately preceding the date of the application.

(7) Any owner/employee has been convicted of or plead guilty to, in a court of competent jurisdiction, any felony, any crime involving theft or fraud, or any crime against property within the last ten (10) years. The pleading of nolo contendere shall be considered as a conviction for the purposes of this provision.

(8) Any owner/employee has engaged in any deceptive business practice.

(9) Any owner/employee is less than 18 years of age.

(10) Any owner/employee has failed to obtain any paper or document necessary in pursuance of this business or this application as may be required by any officer, agency or department of the City, County, State or United States under authority of any law, ordinance or resolution of the City, State or United States or has failed to be properly eligible for legal residence in this State or the United States.

(11) Any owner/employee has made any false statements in the application.

(12) The applicant or holder of the permit has violated any provisions of this Article.
(Ord. No. 2184, 06-06-14)

Sec. 10-239. Renewal of permits.

Permits for secondhand dealers and employees may be renewed on a calendar year basis provided that the applicants continue to meet the requirements set out in this Article. Each secondhand dealer must file a verified annual report showing the person's gross receipts from the business and the amounts paid to the employees for the preceding calendar year and such shall be submitted with renewal applications. Renewal applications shall be submitted by January 1 of the year for which such permit is requested along with a fee to be set by Resolution of the City Council.
(Ord. No. 2184, 06-06-14)

Sec. 10-240. Permit nontransferable.

No secondhand dealer or employee permit may be sold, transferred or assigned to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or 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 permit holder 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 affecting 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(s).
(Ord. No. 2184, 06-06-14)

Sec. 10-241. Recordkeeping.

(a) *Contents of record book.* All secondhand dealers shall keep a book wherein shall be entered an accurate description of all regulated secondhand items, as specified in section 10-56.2., acquired by the secondhand dealer, including, to the extent possible, the manufacturer, model, serial number, style, material, kind, color, design, number of stones if jewelry, and all other identifying names, marks and numbers, and the name, address, and date of birth of the person from whom purchased or acquired and the date and hour of the purchase. These entries shall be made as soon as possible after the transaction is had, in no case more than one hour thereafter.

(b) The secondhand dealer shall require all sellers to show proper identification prior to acquiring any regulated secondhand item. Proper identification is defined as a government-issued photo identification card such as a driver's license, military identification card, state identification card, or passport. The secondhand dealer shall make a digital photograph of the identification and maintain it in the same manner as other digital photographs required under this section.

(c) A digital photograph shall be made by the secondhand dealer or employee at the time of acquisition of any regulated secondhand item of the item and the item's serial number, which number shall be clearly visible and readable in the photograph if

imprinted on the item. If the item was never imprinted with any type of serial number, then the photograph shall show the entire item. All such digital photographs shall be submitted to the reporting system as indicated below. Further, a digital photograph of the seller's face, similar to those on accepted identification, shall be made at the time of each and every acquisition and submitted to the reporting system. The photograph shall clearly show a frontal view of the seller's face along with the secondhand dealer's receipt and/or, if the secondhand dealer is a pawnbroker, the pawn ticket number. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

(d) The secondhand dealer shall obtain from each seller the fingerprint of the right-hand index finger, unless such finger is missing, in which the event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact fingerprinted. The electronic digital fingerprint scanner will be the primary method of entry required. The fingerprint shall be imprinted onto the transaction form in the designated area along with the signature of the seller. The fingerprint must be clear and legible. In the event that more than one transaction form is required, a fingerprint and signature shall be obtained for each form. Fingerprints and the information required herein shall be obtained upon each occasion of acquisition.

(e) *Inspection.* The secondhand dealer shall store the above records, digital images, and fingerprints for a period of four (4) years, and make them available for inspection and examination by the police department upon request.

(f) Every secondhand dealership shall enter each transaction as it occurs into the electronic automated reporting system via the internet to the administrator of the electronic automated reporting system, who will, in turn, electronically transmit all transactions to the Elberton Police Department.
(Ord. No. 2184, 06-06-14)

Sec. 10-242. Entries to be numbered serially; property to be tagged.

Every entry required to be made in the secondhand dealer's book required by Section 10-241. shall be numbered serially, and the property described in the entry shall have attached to it a tag bearing the same serial number until the property is disposed of by sale, trade or other lawful means. This paragraph does not apply to the purchase of property from licensed wholesale distributor businesses for the purpose of retail sales; however, the secondhand dealer shall be required to maintain all purchasing records for property exempted from this paragraph.
(Ord. No. 2184, 06-06-14)

Sec. 10-243. Acquiring articles with serial numbers mutilated or altered.

It shall be unlawful for any secondhand dealer to purchase or acquire any watch, clock, pistol, gun, automobile tire or battery or any other article commonly branded with a serial number upon which the number has been mutilated, altered, or removed.
(Ord. No. 2184, 06-06-14)

Sec. 10-244. Daily reports to police; form and contents.

Every secondhand dealer identified in this Article shall make a daily report in such form as may be prescribed by the chief of police, which may be electronic, of all property purchased or acquired by the dealer during the 24 hours ending at 12:00 midnight on the date of the report. The reports shall be made as follows:

(1) Daily reports shall list all regulated secondhand items acquired, the transaction number for each transaction, and a description of the regulated secondhand items including, to the extent possible, the manufacturer, model, serial number, style, material, kind, color, design, number of stones if jewelry, and any other identifying names, marks and numbers. The daily report shall also list the name, address, race, sex, height, weight, driver's license number, and date of birth of the seller of the items, along with the date and time of the transaction. Unless otherwise provided, an electronic automated reporting system shall be utilized to transmit said reports. The secondhand dealer shall be required to register with the designated system within one week of receipt of a permit under this Article.

(2) In the event that the electronic automated reporting system becomes temporarily or permanently disabled, or has not been employed, secondhand dealerships will be notified as soon as possible. Secondhand dealerships that incur electronic system failures or other events that would cause partial or complete loss of electronic reporting should notify the Police Department forthwith with the reason for the failure. In this event, the secondhand dealers will be required to make records of transactions on paper forms. A digital camera will be used to collect the required pictures and transferred to a CD or similar effective media for submittal, and a fingerprint ink pad will be used to collect fingerprints. The paper forms must include information as enumerated in this Article. Secondhand dealers shall maintain a minimum three-day supply of these paper forms. On a daily basis, all transactions not reported in electronic automated reporting system will be delivered to the Police Department by the secondhand dealer within two (2) hours of the end of the business day for every day until the event has been corrected or electronic automated reporting system designated.

(3) Fees. The daily electronic reporting shall be by an electronic reporting system required by the Chief of Police with the approval of the City Manager and any fee for use of same may be collected by the third-party administrator of the automated reporting system, pursuant to the requirements of the City. Any fees required and collected by the

City will be used to offset the costs to the City to regulate and monitor these businesses.
(Ord. No. 2184, 06-06-14)

Sec. 10-245. Examination and inspection of articles by police; segregation of suspicious articles.

All property purchased or acquired by a secondhand dealer shall at all times be subject to examination and inspection by the police department. If, upon the inspection, a police officer shall have reasonable cause to believe that any of the property is stolen, he shall segregate it. It shall thereafter be unlawful for the person in possession of the property to dispose of it, or in any manner mutilate, melt or disfigure it, until thirty (30) days have elapsed from the date of the inspection.
(Ord. No. 2184, 06-06-14)

Sec. 10-246. Property to be held after acquisition.

All property purchased or acquired by a secondhand dealer shall be held for not less than thirty (30) days, or longer if directed by the Police Department, before disposing of same by sale, transfer, shipment or otherwise. All property and/or titles must be kept on the premises. During such thirty (30) day period, these secondhand items will be maintained in an area not accessed by customers.
(Ord. No. 2184, 06-06-14)

Sec. 10-247. Dealing with minors.

It shall be unlawful for any secondhand dealer to acquire any property of the kinds described in this Article from any person under the age of 18 years, provided that any secondhand dealer will not be held subject to the provisions of this section if the person produces a valid identification, as defined in this Article, showing he/she is at least 18 years of age.
(Ord. No. 2184, 06-06-14)

Sec. 10-248. Suspensions, revocations and appeals of permit denials.

(a) The City Manager may suspend or revoke a secondhand dealer or employee permit pursuant to the reasons stated in this Article. If the City Manager or designee intends to suspend or revoke said permit(s), the City Manager or designee shall send a written notice of suspension or revocation, by certified mail, return receipt requested, to the permit holder at the address for the secondhand dealership or pawnshop stated on the permit and, if an employee permit, to the address stated on the employee's application. The written notification shall inform the permit holder of the reason for the suspension or revocation and shall inform the permit holder of his/her right to appeal

said determination to the City Council or designated hearing officer within thirty (30) days of the suspension or revocation letter, pursuant to the procedures stated herein.

(b) If the applicant chooses to appeal a denial of a permit by the City Manager, or suspension or revocation of a permit by the City Manager, pursuant to this Article, the applicant/permittee shall do so in writing to the City Manager within the thirty-day period following the denial, suspension or revocation letter. Upon receipt of the request to appeal, the City shall schedule a public hearing in front of the City Council or designated hearing officer within sixty (60) days of the receipt of the appeal request. The City shall inform applicant/permittee of said hearing no less than fourteen (14) days prior to the hearing, in writing, of the location and time of the hearing.

(c) The hearing shall be conducted in accordance with the procedures established by the Mayor. The City Council or designated hearing officer shall render a decision to affirm or reverse the City Manager's decision to deny, suspend or revoke the permit in writing within five (5) business days from the date of the hearing, by certified mail, return receipt requested, to the applicant/permityee. The decision of the City Council or designated hearing officer shall be final.

(d) The applicant/permityee may appeal an adverse decision of the City Council or Hearing Officer by filing a Petition for Writ of Certiorari with the County Superior Court in accordance with state law within thirty (30) days of the Council or Hearing Officer's decision.
(Ord. No. 2184, 06-06-14)

Sec. 10-249. Redemption; lost or damaged goods

Any person properly identifying him or herself and presenting a pawn ticket to the pawnbroker shall be presumed to be the pledgor or seller and shall be entitled to redeem the pledged goods described in such ticket. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be responsibility of the pawnbroker to replace the lost or damaged goods with like kinds of merchandise and proof of replacement shall be a defense to prosecution. For the purposes of this section, loss includes being destroyed or having disappeared because of any cause, whether known or unknown, that results in the pledged goods being unavailable for return to pledger.
(Ord. No. 2184, 06-06-14)

Sec. 10-249.1. Additional registration and regulations applicable to dealers in precious metals and gems

(a) In addition to the provisions contained in this Article, dealers in precious metals and gems shall comply with the requirements of O.C.G.A. § 43-37-1, et. seq., and shall register with the police department as required by State law, in addition to

compliance with this Article. It shall be unlawful for any person to advertise or transact business as a dealer in precious metals and gems without first registering to do so pursuant to this section. It shall be unlawful for any dealer in precious metals or gems to purchase precious metals in a melted or smelted state unless the purchase is from a registered dealer in precious metals or gems.

(b) Nothing in this Article shall supersede the requirements of O.C.G.A. § 44-12-130, et. seq.; rather, the provisions provided herein shall be construed as cumulative to such state law provisions.
(Ord. No. 2184, 06-06-14)

BUSINESS

ARTICLE IX. TELECOMMUNICATIONS SERVICES FRANCHISES AND LICENSES

Sec. 10-250. Definitions.

Except as otherwise provided herein, the following terms, phrases, words and their derivations shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words used in the singular number include the plural number.

Affiliated person. means each person who falls into one or more of the following categories;

(1) Each person has, directly or indirectly, a controlling interest in the applicant;

(2) Each person in which the applicant has, directly or indirectly, a controlling interest;

(3) Each officer, director, joint venture or joint venture partner, of the applicant; and

(4) Each person, directly or indirectly, controlling, controlled by, or under common control with, the applicant; provided that “affiliated person” shall in no event mean the city or any creditor of the applicant solely by virtue of its status as a creditor and which is not otherwise an affiliated person by reason of owning a controlling interest in, being owned by, or being under common ownership, common management or common control with, the applicant.

Cable services. means "cable services" as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and as may be further amended from time to time (the "Cable Act"), but does not include telecommunications services or private telecommunications services. In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes in applicable, "cable services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

Cable system. means any "cable system" as defined in the Cable Act.

City. means the City of Elberton.

City Council. means the council of the city and its designee or any successor thereto.

Control or Controlling Interest. means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, including, but not limited to, a person's compliance with a franchise or revocable license, whether through the ownership of voting securities, by contract, or otherwise, and the beneficial ownership of shares representing ten percent or more of the votes entitled to be cast by a corporation's voting shares shall create a rebuttable presumption of control.

Facility Services. means the installation, construction, operations or maintenance of conduit or related facilities in the streets by a person for sale or lease to third parties, other than affiliated persons, that use such conduit or related facilities for the transmission of telecommunication services, but such person does not itself provide telecommunications service or cable service to such third parties or any other locations or other persons in the license area.

Franchise. means an initial authorization, or renewal thereof, issued by the city in accordance with the provisions of this article, which authorizes the occupation and use of the streets by a telecommunications system to provide telecommunications services.

Grantee. means the legal entity to which is granted the right, authority and responsibility to provide facility services along licensed routes pursuant to a license, or to construct, install, operate and maintain a telecommunications system as necessary to: (a) furnish, supply and distribute telecommunications services to any locations or persons in the franchise or license area; (b) provide

private telecommunications services along licensed routes pursuant to a license; or (c) transport telecommunications services across the city along licensed routes pursuant to a license without terminating or originating any telecommunications services at or from any person or location in the city.

May. is permissive.

Ordinance. means this ordinance and all modifications and amendments thereto.

Person. means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the city.

Private Telecommunications Services. means the transmission of telecommunications by a person, regardless of the facilities used, for or in connection with the internal operations of such person's business, residence or employment and not for or in connection with the provision or offering of telecommunications services for sale or resale to any person and shall not mean cable services.

Revocable License. means an initial authorization or renewal thereof, issued by the city in accordance with the provisions of this ordinance, which authorizes the occupation and use of specifically identified streets, provided that a revocable license shall be issued only in the limited circumstances set forth in section 10-251 of this ordinance.

Shall. is mandatory, not merely directive.

Streets. means the surface of, as well as the spaces above and below, any and all streets, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels, parkways, public grounds or waters, and other public rights-of-way within or belonging to the city.

Telecommunications. means "telecommunications" as defined by 47 U.S.C. Section 153(43) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, but shall not include cable services.

Telecommunications Service. means "telecommunications service" as defined by 47 U.S. C. Section 153(46) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, but shall not include cable services. In the event that "telecommunications service" is no longer defined in the Communications Act or the definition in the Communications Act otherwise becomes inapplicable, "telecommunications service" shall mean "telecommunications service" as defined in the Communications Act

immediately prior to such term no longer being defined in the Communications Act or such definition otherwise becoming inapplicable.

Telecommunications System. means the system, plant, equipment or property within the streets in the franchise or license area over which telecommunications service or private telecommunications service is provided, and to be constructed, operated and maintained by a grantee pursuant to a franchise or license ordinance or agreement.

(Ord. No. 2094, Section 1, 10-1-01)

Sec. 10-251. Granting Authority.

(a) No person shall use or occupy the streets to construct, operate or maintain a telecommunications system over which telecommunications services or private telecommunications services are provided, or use or occupy the streets to provide facility services, without a franchise or revocable license granted in accordance with provisions of this ordinance. The city intends to exercise its authority to franchise or license persons pursuant to this ordinance to the maximum extent permitted by applicable law, including the 1996 Act.

(b) A person shall not use or occupy the streets to operate a telecommunications system over which telecommunications services or private telecommunications services are provided without a franchise, except that such person may use or occupy specific streets without a franchise if the person obtains a revocable license in accordance with the terms of this ordinance. A revocable license is intended to be a limited grant of authority to use and occupy specifically identified streets and: (a) may be granted only if the use or occupation of such streets is for the sole purpose of providing private telecommunications services or facility services; or (b) shall be granted to provide telecommunications services only if the use or occupation of such streets, together with the use or occupation of any streets pursuant to revocable licenses previously granted to such person and affiliated persons, shall not exceed 500 linear feet; or (c) shall be granted only if the use or occupation of such streets is by a telecommunications system that is not used by the grantee or any other person to sell, resell or otherwise provide telecommunications services to any person in the city. In the event an application for a revocable license would cause a person to exceed or fail to comply with the limits specified in this subsection 10-251(b), then such person must apply for a franchise in accordance with the provisions of this ordinance, and the use of specifically identified streets pursuant to all previously granted revocable licenses shall thereafter be pursuant to and in accordance with any such franchise that may be granted.

(c) The council may grant one or more franchises in accordance with this ordinance, provided that the council reserves the right to modify any provisions of this ordinance by amendment hereof.

(d) The grant of any franchise or revocable license shall be made by adoption of a separate ordinance by the council and shall be on such terms and conditions as may be specified in said separate ordinance and/or a franchise or license agreement between the city and the grantee.

(e) Any franchise revocable license granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises or revocable licenses as it deems appropriate, and/or itself engage in the provision of telecommunications services, private telecommunications services or facility services.

(f) A franchise may be granted for all or any defined portion of the city. A revocable license may only be granted for use of specifically identified streets.

(g) The grant of franchises and revocable licenses by the city to persons constructing, operating or maintaining a telecommunications system shall be subject to the provisions of applicable law, such as the provisions in the 1996 Act, as amended, governing telecommunications franchises and renewals thereof.
(Ord. No. 2094, Section 1, 10-1-01)

Sec. 10-252. Franchise Applications.

(a) Applications for franchises and revocable licenses shall be submitted in such form and be issued on such terms and conditions as the city manager may determine, subject to applicable law.

(b) Any application for a franchise or revocable license shall contain and/or require the following information with respect to the proposed franchise or revocable license:

(1) Applicant's name, address, telephone number, and federal employer identification number or social security number, copy of applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used by applicant;

(2) For the purpose of determining who controls applicants, a detailed statement of the corporation or business entity organization of the applicant, including the following:

(a) The names and business addresses of all officers and directors of the applicant;

(b) The names and business addresses of all persons having control over the applicant;

(c) Financial information sufficient to demonstrate that the applicant has the financial ability to construct and maintain the telecommunications system, or to provide facility services, in a safe manner and in accordance with the city's management policies, rules and regulations with respect to the streets and to the extent not prohibited by law; and

(d) For purposes of determining whether the applicant will construct, maintain, operate, and repair the telecommunications system, or provide facility services, in compliance with the city's management policies, rules and regulations with respect to the streets and in a manner protective of the public health, safety and welfare with respect to the applicant's use of the streets, the names and addresses for telecommunications systems owned or controlled by the applicant and the areas served by such systems.

(3) In order to permit the city to manage its streets, a description of the proposed plan for construction and maintenance of the telecommunications system or facility services to be constructed in the streets, which shall include the following:

(a) A map indicating the location of the system or facility services in the streets, and an estimated construction schedule, if known;

(b) A statement describing the proposed and actual location of facilities and equipment to be used in the streets by the applicant; and

(c) To the extent not prohibited by law, any other details, statements, supplementary information, or references reasonably pertinent to the city's management of the streets or the compensation to be paid to the city, which shall be required or requested by staff or by any other provision of law.

(c) No application for a new franchise or revocable license shall be considered without payment by the applicant of application fees as provided in this section. If a franchise or revocable license is granted, application fees will not be deemed a credit towards any other fees or sums due by the grantee. If an application is denied, the application fee will not be refunded, except if required by law.

(1) *Purpose of Application Fees.* The application fees provided by this section will serve to cover the direct and indirect costs incurred by the city in processing the application, evaluating the applicant, and granting a franchise, and shall include, but not be limited to administrative, engineering, publication, legal, and consultant's expenses.

(2) *Application Fee.* The applicant will be expected to pay the reasonable cost of the city by evaluating the application. Notwithstanding any other requirement of this ordinance, each applicant for a franchise must furnish with its proposal a nonrefundable application fee as set by the mayor and council from time to time by certified check or cashier's check made payable to the city, and each applicant for a revocable license must furnish with its proposal a nonrefundable application fee as set by the mayor and council from time to time by certified check or cashier's check made payable to the city. In the event the city's reasonable costs exceed such amount, the applicant may be required by the city to pay any additional amount to cover such costs. In the event the city's reasonable costs are less than the application amount, the city may reimburse to the applicant the amount in excess of the city's actual cost if required by applicable law.

(d) It shall be the responsibility of each applicant for a franchise or revocable license to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the city and any federal, state, or local government authority having jurisdiction.

(e) All applications for franchises or revocable licenses, including any additions, modifications or amendments thereto, shall be available for public inspection in the city clerk's office during normal business hours.
(Ord. No. 2094, §1, 10-1-01)

Sec. 10-253. Evaluation Criteria.

(a) An applicant shall be granted a franchise or revocable license to construct, operate or maintain a telecommunications system over which telecommunications services are provided, provided the mayor and council reasonably determines that the applicant has agreed to or meets the following factors:

(1) The adequacy of the proposed compensation to be paid to the city;

(2) Demonstration of adequate financial and technical ability to construct and maintain a telecommunications system in the streets, which such demonstration may be made by an adequate bond, security fund,

and/or such other demonstration that is reasonably acceptable to the city, and a
certificate of public convenience or other authorization from the state or Federal Communications Commission permitting the applicant to provide telecommunications services in the city.

(3) The ability of the applicant to maintain the property of the city in good condition throughout the term of the franchise;

(4) The willingness and the ability of the applicant to meet construction requirements and to abide by all conditions, limitations and requirements with respect to the franchise (including any terms or conditions imposed pursuant to section 10-255 of this ordinance), any public health, safety and welfare requirements reasonably related to the applicant's use of the streets, and the city's management of streets; and

(5) To the extent not prohibited by law, any other factors or considerations reasonably deemed pertinent by the city for managing the streets and safeguarding the interests of the city and the public in the streets, and for ensuring the city receives fair and reasonable compensation for use of the streets.

(b) In making any determination hereunder as to any application for a revocable license to provide private telecommunications services and in accordance with applicable law, other than Section 253 of the Communications Act which is not applicable to persons providing only private telecommunications services or facility services, the mayor and council may consider such factors as it deems appropriate and in the public interest, including, without limitation, the foregoing factors to the extent applicable.
(Ord. No. 2094, §1, 10-1-01)

Sec. 10-254. Procedure for consideration of and action on applications.

(a) The city may make such investigations and take or authorize the taking of such other steps as it deems necessary or appropriate to consider and act on applications for franchises or revocable licenses.

(b) After considering such information provided pursuant to this ordinance as it determines to be appropriate, the mayor and council shall set one or more public hearings for consideration of the application(s), fixing and setting forth a day, hour and place certain at which such application(s) shall be heard, and providing notice of such public hearing in accordance with applicable law.

(c) The mayor and council may authorize negotiations between city officials and applicants on the terms of the proposed franchise or revocable license.

(d) The mayor and council shall consider the application for a franchise or revocable license to provide telecommunications services in accordance with this ordinance and applicable law, including 47 U.S.C. §253, and shall grant the franchise or revocable license, provided that the applicant has agreed to the terms on which the franchise or revocable license is to be granted and meets the evaluation criteria set forth in section 10-253 of this ordinance. The city also reserves the right to waive any or all requirements in order to grant a franchise or revocable license to an applicant when it determines that the best interests of the city may be served thereby or that such waiver is required by applicable law.

(e) Upon completion of the steps deemed appropriate by the council, the council may grant the revocable license to provide private telecommunications services or facility services and may specify the conditions under which the revocable license is granted. Alternatively, the city may reject any and all applications for a revocable license to provide private telecommunications services or facility services. The city also reserves the right to waive any or all requirements when it determines that the best interests of the city may be served thereby.
(Ord. No. 2094, §1, 10-1-01)

Sec. 10-255. Terms and Conditions of Franchise and Revocable License.

(a) The terms and conditions applicable to any franchise or revocable license granted pursuant to this ordinance shall be set forth in the separate ordinance granting the franchise or revocable license or in a separate written agreement. Such separate ordinance or written agreement, among other things, may address the following subjects, to the extent not prohibited by law:

(1) The term of the franchise or revocable license, provided, however, that the initial term of the revocable license shall not exceed five years and shall not be renewed for terms exceeding five years;

(2) The franchise area authorized by the franchise, or the streets that may be used pursuant to the revocable license;

(3) The compensation to be paid to the city;

(4) The circumstances upon which the franchise or revocable license may be terminated or cancelled;

(5) The mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the grantee's obligations under the franchise or revocable license;

(6) For the limited purpose of ensuring that the grantee is complying with the terms of the franchise or revocable license, including but not limited to, any compensation or street management provisions, the city's right to inspect the facilities and records of the grantee;

(7) Insurance and indemnification requirements applicable to the grantee;

(8) The obligation of the grantee to maintain complete and accurate books of account and records with respect to its obligations under the franchise or revocable license, including, but not limited to, any compensation or street management provisions, and the city's inspection rights with respect thereto;

(9) Provisions to ensure quality workmanship and construction methods in the streets;

(10) Provisions to ensure that the grantee will comply with all applicable city, state and federal laws, regulations, rules and policies;

(11) Provisions to ensure adequate oversight by the city of the grantee's use of streets and compliance with the franchise or revocable license;

(12) Provisions relating to an assignment or other transfer of the franchise or revocable license or the telecommunications system that results in a change in control;

(13) Remedies available to the city to protect the city's interest in the event of the grantee's failure to comply with terms and conditions of the franchise or revocable license;

(14) Provisions to ensure that the grantee will obtain all licenses and permits necessary to provide telecommunications services by use of the city's streets from any governmental body having jurisdiction over the grantee, including, but not limited to, the Federal Communications Commission.

(15) Provisions to ensure that the grantee will protect the property of the city from damage or interruption of city operations resulting from the construction, operation, maintenance, repair or removal of improvements

of the telecommunications system, or from the provision of facility services.

(16) Provisions designed to minimize the extent to which the public use of the streets of the city are disrupted in connection with the construction of improvements relating to the telecommunications system, or the provision of facility services; and

(17) Such other provisions as the city reasonably determines are necessary or appropriate to permit the city to manage it streets or ensure compliance with the franchise or revocable license, to the extent not prohibited by law.

(b) The city manager shall make available to an applicant a model franchise or revocable license, as applicable, containing the terms and conditions the city seeks to impose pursuant to this section. The city manager shall have the right to modify from time to time such model franchise or revocable license, so long as such modifications are consistent with this ordinance and applicable law.
(Ord. No. 2094, Section 1, 10-10-01)

Sec. 10-256. Revocation of Revocable License.

The revocable license shall be revocable at any time by the city for cause or, if the revocable license is for the provision of private telecommunications services or facility services, for the city's convenience. The revocable license, together with all revocable licenses granted to the applicant or affiliated persons shall not authorize the occupation and use of more than 500 linear feet of specifically identified streets, unless the use or occupation of the streets does not involve the offering or provision of telecommunications services by the grantee, any affiliated persons or any other persons to or from any person or location in the city, or unless the use or occupation of the streets is for the provision of facility services.
(Ord. No. 2094, Section 1, 1-10-01)

Section 10-257. Franchise fee for state issued cable or video franchise.

The city hereby requires a franchise fee of 5.0% of gross revenues generated within the city for any cable or video state franchise issued in its corporate boundaries by the State of Georgia.
(Ord. No. 2151, Section 2, 3-10-08)

Section 10-258. Authorized designee.

The city hereby authorizes the city manager, 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 secretary 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 5.0% franchise fee rate applicable to such applicant or holder of a state franchise.
(Ord. No. 2151, Section 3, 3-10-08)