ARTICLE 4
SPECIFIC USE PROVISIONS

Division I. Uses.

Division II. Towers and Wireless Telecommunications Facilities.

Division III. Adult Entertainment.

Division I. Uses.

Sec. 4-05. Accessory Use, Building or Structure.

(a) **Relationship to principal use.** No accessory use, building or structure shall be allowed on any lot until there exists a principal use on the lot.

(b) **Area.** An individual accessory use or building shall not occupy more floor area than the floor area occupied by the principal use. The area of any individual accessory building's or structure's floor area shall not exceed 50 percent of the principal building's floor area.

(c) **Height.** The maximum height of any accessory building shall be 2 stories or 24 feet in height.

(d) **Location on lot.** All accessory uses, buildings, and structures shall be located in the side or rear yard of the lot.

(e) **Separation.** Accessory buildings shall be separated from principal buildings and any other permitted accessory buildings by at least ten feet.

(f) **Setbacks.** Accessory buildings having a floor area greater than 144 square feet shall comply with the same setbacks as required for principal buildings for the zoning district in which it is located. If an accessory building is attached to a principal building by a breezeway, passageway, or similar means, such accessory building shall comply with minimum building setback requirements for the principal building.

(g) **Design review.** Accessory buildings having a floor area greater than 144 square feet shall be administratively reviewed and are subject to the approval of the community development director with regard to appearance, materials, and design in relation to the principal structure.

Sec. 4-10. Accessory Dwelling Unit.

Accessory dwelling units shall meet the following requirements:

(a) **Owner occupancy.** Either the accessory apartment or the principal dwelling unit shall be owner-occupied.

(b) **Number limit.** Only one accessory dwelling unit shall be permitted on a lot. An accessory dwelling unit shall not be permitted on the same lot as a home occupation.

(c) **Setbacks.** If attached the accessory dwelling unit shall meet the minimum required setbacks for principal dwelling for the residential zoning district in which it is located. If detached from the principal dwelling, the accessory dwelling unit shall be setback a minimum of 20 feet from any property line.

(d) **Parking.** One additional off-street parking space is required and shall be provided, in a side or rear yard only.

(e) **Area minimums.** At least 340 square feet of heated floor area shall be provided per adult occupant. The heated floor area for an accessory dwelling unit shall be at least 680 square feet and shall not exceed 1,000 square feet or the size of the principal dwelling, whichever is less.

(f) **Entrance.** The entrance to an accessory dwelling unit shall be from a rear or side yard and shall not face the street to which the principal dwelling is oriented.

(g) **Architectural finish.** Accessory dwelling unit, whether attached or detached, shall have exterior finishes or architectural treatments (e.g., brick, wood, stucco, etc.) of an appearance substantially similar to those on the principal dwelling on all elevations.

(h) **Water and sewer.** The County Health Department must certify that existing or proposed water, sanitary sewer, and/or septic tank facilities are adequate to serve both the principal dwelling and the accessory dwelling unit.

Sec. 4-15. Agricultural Crops and Timbering Activities.

(a) **Agricultural crops.** The growing and cultivation of food crops is a permitted accessory use in all zoning districts if located in a side or rear yard.

(b) **Timbering**. No permit shall be required for timber harvesting; provided, however, that all such activities must be consistent with Article 12 of this development code relative to tree protection and other applicable regulations of this development code. All persons or firms harvesting standing timber in the city for delivery as pulpwood, logs, poles, or wood chips to any woodyard or processing plant located inside or outside the state of Georgia shall provide notice of such harvesting operations to the Powder Springs City Council prior to cutting any such timber. Prior written notice shall be required of any person or firm harvesting such timber for each separate tract to be harvested thereby, shall be in such form as prescribed by state rule or regulation of the director of the Georgia department of natural resources and shall consist of the following: (a) A map of the area which identifies the location of the tract to be harvested and, as to those trucks which will be traveling to and from such tract for purposes of picking up and hauling loads of cut forest products, the main point of ingress to such tract from a public road and, if different, the main point of egress from such tract to a public road; (b) A statement as to whether the timber will be removed pursuant to a lump sum sale, per unit sale, or owner harvest for purposes of ad valorem taxation under Code Section 48-5-7.5; (c) The name, address, and daytime telephone number of the timber seller if the harvest is pursuant to a lump sum or per unit sale or of the timber owner if the harvest is an owner harvest; and (d) The name, business address, business telephone number, and nighttime or emergency telephone number of the person or firm harvesting such timber. Such notice may be submitted in person, by transmission of an electronic record via telefacsimile or such other means as approved by the Powder Springs City Council, or by mail. If the city receives a notice required by this section regarding timber harvesting operations to be conducted in whole or in part within the corporate limits of the city, the city shall transmit a copy of such notice to the governing authority of the county or the designated agent thereof. [Reference O.C.G.A. 12-6-24].

Sec. 4-20. Animal Shelter.

No animal shelter shall hereafter be established until or unless any license required by the Georgia Commissioner of Agriculture is issued and a copy of the license is provided to the

community development director prior to commencement of operations. Such use shall also comply with any rules adopted by the Georgia Commissioner of Agriculture pursuant to the Georgia Animal Protection Act, O.C.G.A. 4-11-14. (Additional Reference: Rules of Georgia Department of Agriculture, Animal Protection Division, Chapter 40-13-13 Animal Protection).

Sec. 4-25. Asphalt or Concrete Plant.

Asphalt plants or concrete plants shall comply with any conditions imposed as part of a special use approval and in addition shall comply with the following standards:

(a) **Minimum site area.** The minimum site area for establishment of an asphalt or concrete plant shall be five acres.

(b) **Federal and state law.** The use shall comply with all applicable federal and state laws, and a copy of any required federal or state permits shall be submitted to the community development director prior to the commencement of operation.

(c) **Operation.** Hours of operation shall be limited to daylight hours.

(d) **Noise and air pollution abatement.** Noise abatement and air pollution abatement plans will be required as part of an application for special use and shall be subject to the approval of the city during the special use application process.

(e) **Buffer.** A natural, undisturbed buffer no less than 150 feet in width shall be required abutting all property lines adjoining a residential use, residential zoning district, or public school or park.

Sec. 4-30. Attendant's Shelter.

(a) Notwithstanding the requirement that accessory structures are prohibited in front yards of a lot, when a subdivision or establishment provides perimeter security via a fence or wall with a manned or automated/code controlled access gate, an attendant's shelter may be authorized to be constructed by the community development director.

(b) If authorized by the community development director, an attendant's shelter shall be no larger than 100 square feet of area, no greater than 20 feet in height, and placed no closer than 20 feet to the front property line.

Sec. 4-35. Automated Teller Machine.

(a) Operators of remote service terminals are required to adopt procedures for evaluating the safety of such terminals, including lighting, landscaping or obstructions, and incidence of crimes of violence (O.C.G.A. 7-8-2).

(b) Such facilities must meet lighting requirements including minimum 10 candlefoot power at the face of the terminal and two candlefoot power within certain distances from the face of the remote service terminal as specified by O.C.G.A. 7-8-3.

Sec. 4-40. Automotive Repair.

Automotive repair facilities and automobile repair accessory to any other permitted use shall meet the following requirements:

(a) **Equipment and parts.** All equipment and vehicle parts shall be stored within a fully enclosed building or structure.

(b) **Operation.** All repair work shall be conducted within a fully enclosed building or structure.

(c) **Service bays.** Service bays with overhead doors shall not be located on the front building façade of a building unless provisions are made for screening them from view from the front property line.

(d) **Vehicle storage.** Vehicles not being serviced shall be stored in a fully screened and fenced lot located in the side or rear yard of the lot. No vehicle shall remain on premises for a period exceeding 5 days unless parts have been ordered, in time not to exceed 30 days. The total number of vehicles waiting for parts shall not exceed 2 vehicles per service bay at any time, with the minimum allowance being 4 and the maximum allowance being 10. No junk vehicles shall be permitted on the premises at any time.

(e) Existing automotive repair facilities that are legally non-conforming that requires to add accessory uses to existing floor space without any building expansion will require a Special Use approval.

Sec. 4-45. Automobile Sales.

(a) **Paved parking surfaces.** All surfaces where vehicles are stored or displayed for sale and all parking areas shall be paved.

(b) **Storage and inoperable vehicles.** No outside storage of parts or parking of non-operable vehicles or vehicles with body damage shall be permitted.

(c) **Service bays.** If the automobile sales establishment provides for the servicing or repair of vehicles, service bays with overhead doors shall not be located on the front building façade of a building.

(d) **Unloading zone.** An automobile sales establishment shall provide space on the lot devoted specifically and exclusively for automobile loading and unloading, as approved by the community development director. It shall be unlawful to load or unload automobiles intended for sale, service, or repair at the facility within the right-of-way of any public street. It shall be unlawful to park cars for sale within or otherwise encroach upon the designated and approved loading or unloading zone except for loading and unloading operations.

(e) **Loudspeakers.** Outside loudspeakers shall not be permitted when an automobile sales lot abuts a residential zoning district.

(f) **Lighting plan.** When abutting a residential zoning district, automobile sales establishments require submittal and approval by the community development director of a photometric plan for lighting demonstrating compliance with the requirements of this development code for outdoor lighting.

Sec. 4-50. Automotive Service.

Any automotive service establishment is subject to compliance with the following requirements:

(a) **Storage and inoperable vehicles.** No outside storage of parts or parking of non-operable vehicles shall be permitted.

(b) **Building area limitation.** The building or portion of the building devoted to such use shall not exceed 8,000 square feet in area, except that this area limitation shall not apply to automobile repair facilities where permitted.

(c) **Service bays.** Service bays with overhead doors shall not be located on the front building façade of a building unless provisions are made for screening them from view from the front property line.

Sec. 4-55. Bed and Breakfast Inn.

Bed and breakfast inns shall meet the following requirements:

(a) **Owner resident occupancy.** The owner of the inn must reside on the property.

(b) **Guest room limit.** There shall be a limit of five guest rooms, excluding the unit or portion of building devoted to the owner-occupant dwelling on the premises.

(c) **Duration of stay.** The length of stay of any guest in the inn shall not exceed 14 consecutive days.

(d) **Exterior appearance.** If the use is established within a building originally designed as a single-family residence, the exterior appearance of the building shall not be altered from its single-family character unless the changes are approved via a special use permit.

(e) **Food service.** Food service shall be limited to breakfast only, which shall be served only to guests taking lodging at the inn. Individual rooms that are rented shall not contain cooking facilities, and no food preparation or cooking for guests shall be conducted within any bedroom made available for rent.

(f) **Parking.** Parking areas for guests, employees, or the owner occupant's household shall be located no closer than 20 feet of any property line. No more than two parking spaces shall be located in the front yard of the lot.

(g) **Employment.** Employment related to the inn shall be limited to members of the owner's household occupying the inn, plus either one full-time employee or not more than two part-time employees.

(h) **Codes.** The inn must meet all applicable building, occupancy, health, safety and food service codes, rules and regulations.

Sec. 4-60. Blasting Operations.

Any use authorized by the city which includes blasting operations shall comply as applicable with the Georgia Blasting Standards Act of 1978 (Chapter 8, Title 25, 25-8-1 et seq.) and any rules and regulations promulgated pursuant thereto. (Additional Reference: Rules of the Comptroller

General, Safety Fire Commissioner, Chapter 120-3-10, Rules and Regulations for Explosives and Blasting Agents).

Sec. 4-65. Caretaker's Residence.

A residence for a caretaker or night watchman may be permitted as a use accessory to a business or industrial establishment, subject to compliance with the following regulations:

(a) **Evidence of need.** Evidence of need for full-time security or on-site management after operation hours must be submitted to and accepted by the community development director.

(b) **Specifications.** The caretaker's residence shall contain a minimum of 600 square feet of heated floor area, which may be included inside a principal building on the lot or as a detached residential structure separate from the principal building(s) on the lot.

(c) **Parking.** Two off-street parking spaces shall be provided in addition to the parking required for the principal uses(s).

Sec. 4-70. Church or Place of Worship.

Churches or places of worship shall be governed by the following requirements:

(a) **Minimum street frontage.** The church or place of worship shall be located on a lot with a minimum of 150 feet of frontage on a public street with a classification of major or greater.

(b) **Minimum acreage.** The church or place of worship shall be established on a lot having a minimum area of two acres dedicated to the use.

(c) **Buffer.** A church or place of worship that constitutes the only principal use on the lot shall provide and maintain a buffer with a minimum width of 50 feet abutting a residential zoning district. Said buffer shall meet or exceed specifications of article 12 of this development code.

(a) **Residence.** A church or place of worship that constitutes the only principal use on the lot shall be permitted one residence as an accessory use, with its customary accessory uses, for the housing of the pastor, priest, minister, rabbi, etc.; provided that if the residence is a stand-alone unit it shall be separated by a minimum of 15 feet from other buildings on the lot.

(b) **School or day care.** A church or place of worship shall be permitted a school or day care center as an accessory use.

(c) **Cemetery.** A church or place of worship that constitutes the only principal use on the lot shall be permitted to have a cemetery as an accessory use.

(d) **Community food or housing shelter.** One community food or housing shelter is an authorized accessory use to a church or place of worship, in office or commercial zoning districts only, subject to Sec. 4-95 of this development code.

(e) **Community donation center.** A church or place of worship operate a community donation center, subject to compliance with Sec. 4-90 of this development code.

(f) **Recreational fields.** A church or place of worship that constitutes the only principal use on the lot shall be permitted to have unlighted recreational fields; lighted recreational fields accessory to a church or place of worship shall require special use approval.

Sec. 4-75. Club or Lodge, Nonprofit.

(a) **Minimum street frontage.** A club or lodge, nonprofit, shall be located on a lot with a minimum of 150 feet of frontage on a public street with a classification of major or greater.

(b) **Minimum acreage.** The church or place of worship shall be established on a lot having a minimum area of two acres dedicated to the use.

(c) **Buffer.** A club or lodge, nonprofit, that constitutes the only principal use on the lot shall provide and maintain a buffer with a minimum width of 50 feet abutting a residential zoning district. Said buffer shall meet or exceed specifications of article 12 of this development code.

Sec. 4-80. Collection Bin.

(a) **Permit required.** It shall be unlawful for any person, firm, or corporation to erect, place, maintain or operate any collection bin, as defined in this development code, without first obtaining a permit issued by the City.

(b) **Permit application requirements.** The applicant shall submit an application for permit that shall include the following:

1. The name address, telephone number, name of contact person of the organization applying for the permit and the person responsible for the maintenance of the collection bin;

2. Written consent of the property owner to place the collection bin on the property, including the name, address and telephone number of the owner;

3. Name and telephone number of any entity which may share or profit from any clothing or other items collected via the collection bin;

4. Information pertaining to the permittee's status with the State corporation regulatory agency;

5. A statement that the permittee will hold the City harmless for the removal of a collection bin when necessary to abate a code violation;

6. A statement that the permittee will hold the property owner harmless for the removal of a collection bin when necessary to comply with the city ordinances; and

7. Proof of liability insurance of at least $1 million for each permitted

(c) **Decision on permit.** A permit application will be issued or denied within 30 days of the date of application. A denial must include written reason for the denial.

(d) **Permit duration.** A permit issued under this section shall be valid for one year and may be renewed each subsequent year.

(e) **General requirements.**

1. No collection bin may be placed on property within residential zones other than on premises occupied as a place of worship. No permit will be issued for any location the City determines would constitute a safety hazard.

2. Each bin must have affixed to it the name, address and telephone number of the owner of the bin and the individual responsible for its maintenance.

3. The location of the bin shall be approved by the City prior to its placement on a parcel, which may not include the area of the parcel defined as the front yard by this code unless approved through administrative design review.

4. No more than one permit may be issued for any parcel or address.

(f) **Maintenance requirements.** The permittee shall comply with the following maintenance requirements:

1. The collection bin must be maintained in an aesthetic manner, including the provision of fresh paint, readable signage and general upkeep as determined by the City;

2. All graffiti must be removed within 48 hours of notice of such condition;

3. No collection bin may be used for advertising or promotional purposes other than information required by this section;

4. Responses to bin maintenance complaints must occur within 24 hours of receiving notification during regular business hours; and

5. If the bin becomes damaged or vandalized, the permittee shall repair, replace or remove within three days of receipt of notice of such condition, unless damage is such as to constitute a danger to persons or property in which case it shall be made safe within 24 hours of notice of such condition.

(g) **Violations and penalties.** In addition to any other penalties or remedies authorized by law, any person who violates this section shall be subject to monetary penalties for each violation, such violations to include, the unpermitted placement of a collection bin, failure to respond to a maintenance request, failure to maintain the collection bin, failure to adhere to placement and removal; and failure to adhere to all permit requirements. If a permittee is found to have willfully violated or ignored the provisions of this section or is found to be in violation of the code regarding the operation and use of the collection bin, the permittee shall be fined and will be deemed ineligible to place, use or employ a collection bin under this section and may have any or all bins removed by the City.

Sec. 4-85. Commercial Recreation Facility, Outdoor.

Outdoor commercial recreational facilities, as defined, are typically accompanied by substantial off-site impacts. Accordingly, the following regulations are imposed and shall be met:

(a) **Minimum area.** Such uses require a minimum lot area of five acres.

(b) **Hours of operation.** Unless otherwise specifically provided for in special use approval, the hours of operation of an outdoor commercial recreation facility shall be limited to time between 8:00 a.m. and 11:00 p.m.

(c) **Setback and buffer.** A minimum building setback of one hundred (100) feet, and a natural undisturbed buffer replanted where sparsely vegetated of at least fifty (50) feet adjacent to side and rear property lines. Greater setbacks and larger buffers may be imposed during special use approval.

(d) **Outdoor lighting.** Uses that propose night lighting other than incidental security lighting shall be required to submit a photometric plan to enable the evaluation of impacts from illumination and compliance with the outdoor lighting requirements of this development code.

(e) **Noise impact study.** A written evaluation of noise impacts is required at the time the following uses are considered: stadiums, amphitheaters, outdoor firearms shooting ranges, and race tracks for animals and motor driven vehicles, and may be required for other uses via special use approval. Such projects may be required to construct noise attenuation walls or otherwise address off-site noise impacts. Loudspeakers/paging systems are prohibited when the facility abuts a residential use or a residential zoning district, unless provided otherwise via special use application or approval.

(f) **Traffic impact study.** Traffic impact statements are required for stadiums, amphitheaters, racetracks for animals or motor-driven vehicles, and recreational vehicle parks and may be required for other uses via special use application or approval.

Sec. 4-90. Community Donation Center.

Community donation centers shall meet the following requirements:

(a) **Indoor storage.** All collected items shall be stored inside an enclosed building.

(b) **Loading and unloading.** Loading/ unloading space shall be provided on the site approved by the community development director.

(c) **Limits on materials collected.** The center shall not accept hazardous materials, motor vehicles or motor vehicle parts, bathroom or kitchen fixtures, guns, ammunition, weapons, carpet, or construction materials.

(d) **Duration of operation.** Hours of operation, and any associated loading or unloading operations, shall occur only between the hours of 7:00 a.m. and 9:00 p.m.

Sec. 4-95. Community Food or Housing Shelter.

Community food and housing shelters shall comply with the following:

(a) **Required facilities.** Housing shelters shall have adequate beds, showers, and restroom facilities provided at the location to meet the needs of the overnight guests, all maintained a clean, safe, and sanitary fashion.

(b) **Duration of stay.** Guests of the shelter shall be required to leave the shelter premises no later than 8:00 a.m.

(c) **Distance separation.** No such use shall be located closer than 500 feet, measured as the crow flies, to a residential zoning district boundary or an existing detached single-family dwelling.

Sec. 4-100. Community Recreation.

Community recreation, as defined, shall be subject to the following requirements:

(a) **Ownership and operation.** The use must be owned and operated by a homeowners or non-profit organization. The facilities shall be open only to residents of the residential development which it serves, and their guests, and shall not be open to the general public for a fee.

(b) **Outside activity duration.** Outdoor activity shall cease by 11:00 p.m.

(c) **Minimum lot size.** The minimum lot size shall be 2 acres.

(d) **Setbacks.** Buildings and structures associated with said use shall be located a minimum of 35 feet from any property line. If outdoor patio or decks are provided, they shall be located no closer than 25 feet from a property line.

(e) **Parking.** Parking shall be provided per the requirements of this development code (see article 6).

(f) **Landscaping and buffering.** The use shall provide and maintain a minimum 10-foot wide landscape strip along the front property line and a 20-foot wide landscape strip or natural buffer along the side and rear property lines, in compliance with article 12 of this development code.

(g) **Outdoor lighting.** If outdoor lighting is provided, exterior lighting proposed for a building, swimming pool, tennis courts, or other structure or use shall comply with the requirements of this unified development code for outdoor lighting.

(h) **Swimming Pools.** See Sec. 4-295.

Sec. 4-105. Dam.

Dams shall comply as applicable with the Georgia Safe Dams Act of 1978 (O.C.G.A. 12-5-370 et seq.), including inspection and permitting to reduce the risk of dam failure (Reference: O.C.G.A. 12-5-371). No dam shall be established unless it meets applicable Rules of the Georgia Board of

Natural Resources governing the construction and maintenance of dams or artificial barriers (Reference: O.C.G.A. 12-5-374; Additional Reference: Rules of Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-8 Rules for Dam Safety). No dam shall be constructed in the city unless a copy of the state permit required per O.C.G.A. 12-5-376 to construct a dam is submitted to the community development director prior to construction. No dam shall be removed in the city unless a copy of the permission to remove a dam granted by the state per O.C.G.A. 12-5-377 is submitted to the community development director prior to removal.

Sec. 4-110. Day Care.

Day care centers shall comply with the following requirements:

(a) **Family day care home**. Family day care homes, as defined herein (3 to 6 children), are permitted as home occupations, subject to compliance with Rules and Regulations for Family Day Care Homes, Chapter 290-2-3, Georgia Department of Early Care and Learning, updated March 26, 2014, as may be amended from time to time.

(b) **Group day care home.** Group day care homes, as defined herein (7 to 18 children) shall meet Rules and Regulations for Group Day Care Homes, Chapter 290-2-1, Georgia Department of Early Care and Learning, updated March 16, 2014, as may be amended from time to time.

(c) **Child care learning centers.** Child care learning centers, as defined herein (19 or more children), shall meet Rules for Child Care Learning Centers, Chapter 591-1-1, Georgia Department of Early Care and Learning, updated March 16, 2014, as may be amended from time to time.

(d) **Adult day services.** Adult day services, as defined, herein, shall meet any applicable rules of the Georgia Department of Human Resources Division of Aging Services.

(e) **Separation.** A day care center operated as a principal use shall comply with all of the property development and performance standards for the zoning district in which it is located, and shall not be located within 300 feet of any other day care center or group day care facility.

Sec. 4-115. Drive-through.

Drive-through facilities shall meet the following requirements:

(a) **Drive-through lanes.** A drive-through lane shall be clearly marked on site plans and on the lot with adequate stacking space on site for vehicles. No drive through lane shall cross an access easement on the lot.

(b) **Speakers.** Outdoor speakers, if utilized, shall not be audible at any property line abutting a residential use or residential zoning district. Noise attenuation, such as a wall or berm, may be required to comply with this restriction.

(c) **Drive-through window locations.** No drive-through window shall be permitted on the front façade of a building. No drive-through window shall not be located within 20 feet of the front façade of a building.

Sec. 4-120. Dwelling, Single-family Attached (Fee Simple or Condominium Townhouse).

Townhouses, whether fee simple or condominium shall meet the following requirements, as applicable:

(a) **Minimum lot frontage.** Each platted lot for a fee-simple townhouse shall have a minimum of 20 feet of frontage on a public street or private road that meets public street standards of the City of Powder Springs.

(b) **Minimum lot size.** The minimum lot size for a fee-simple townhouse lot shall be 2,000 square feet, with an overall average of 2,400 square feet for the townhouse development.

(c) **Setback.** Zero lot line between fee-simple units within the same building shall be permitted, subject to applicable fire and building codes.

(d) **Units in building.** To avoid a monotonous appearance, for any given building, no more than eight units may have common walls.

(e) **Staggered front facades.** Any building containing more than 3 units with common walls must have the roof and front building wall (façade) of each attached unit distinct from the other through offsets of three feet or more in roof design and front building wall location.

(f) **Building separation.** Buildings in townhouse developments shall be separated by a distance of at least 10 feet.

(g) **Access to rear required.** Townhouse developments shall be designed to provide proper access to the rear of all dwelling units for fire-fighting purposes.

(h) **Open space.** No less than 20 percent of the gross site area of a townhouse development must be set aside as open space approved by the community development director.

(i) **Plat approval.** Each fee simple townhouse development or phase thereof shall require subdivision plat approval in accordance with article 15 of this development code.

(j) **Condominium ownership.** If a condominium form of ownership is proposed, the development shall meet all applicable state laws including the Georgia Condominium Act (O.C.G.A. 44-3-70 et. seq.). Proposed bylaws and the articles of incorporation for the condominium association shall be submitted to the community development director with the application for development approval.

Sec. 4-125. Dwelling, Two-family (Duplex).

Property containing a two-family dwelling may be subdivided in a manner so that each dwelling unit is located on its own lot, with zero lot line in between the units, if permitted by applicable building codes and subject to compliance with article 15 of this development code.

Sec. 4-130. Dwelling Unit.

All dwelling units, including on-site built and industrialized housing shall meet or exceed the requirements of this Section. Manufactured homes, except for those located within a manufactured home park, shall also meet or exceed the requirements of this Section.

(a) **Occupancy.** A dwelling unit shall consist of one or more rooms that are arranged, designed or used as living quarters for a family, as defined in this unified development code. A dwelling unit shall have an interior bathroom and complete kitchen facilities, permanently installed, unless "efficiencies" are specifically permitted. Unless granted special use approval, a dwelling unit shall have at least 340 square feet of total building square footage (as determined and maintained in the records of the Cobb County Tax Assessor) per each adult occupant.

(b) **Foundation.** The structure shall be attached to a permanent foundation constructed in accordance with the building code or state regulations, as applicable. Except within a manufactured home park, upon placement, all means of transportation, such as towing devices, wheels, axles, and hitches, shall have been removed. The area beneath the ground floor of the structure shall either be a slab foundation or shall be enclosed around the exterior of the structure with a foundation wall or a curtain wall constructed of masonry at least 4 inches thick, penetrated by openings only for installed vents and access doors.

(c) **Exterior siding.** Exterior siding materials shall consist of hard burned clay (brick), stone with either a weathered face or polished, fluted or broken face, natural wood, or cementations siding (hardy board). No quarry-faced stone shall be used except in retaining walls. Vinyl may be used as an exterior siding material for: windows, soffit, fascia boards and other minor exterior finish elements; infill construction in a subdivision in which the majority of dwelling structures have vinyl exteriors; re-sidings of dwellings built before 1995; and repair of dwellings that were originally vinyl-sided homes. All residing, including repairs exceeding 50 percent of the exterior surface of the dwelling, must be approved and a building permit obtained. A permit may be issued upon proof of compliance with materials and installation standards; inspection of property prior to initiation of work.

(d) **Roof pitch.** All surfaces of the main roof shall have a minimum pitch of 4:12 (4 inches of rise for every 12 inches of run), except that mansard and gambrel roofs must meet this requirement only for those surfaces that rise from the eaves. Minimum roof pitch shall not apply to porches, bay windows and other minor roofs covering extensions to the main structure.

(e) **Roof composition.** All roof surfaces exposed to view shall be covered with asphalt or fiberglass shingles, wood shakes or shingles, standing seam (non-corrugated) metal, clay tiles, slate, or similar materials.

(f) **Minimum width.** The minimum width of the structure shall be greater than 16 feet. Structure width shall be measured between all parallel exterior walls, with the exception of extensions from the main structure for dormers, bay windows, entrance foyers and similar appurtenances, and extensions of no more than 5 feet for other architectural elements of the structure's design.

(g) **Windows.** Windows shall be fully supplied and maintained with glass window panes or with a substitute approved by the Building Official, which are without open cracks or holes. Screens, if provided, shall be securely fastened to the window.

(h) **Exterior doors and frames.** Exterior doors shall be maintained so that they fit reasonably well within their frames so as to substantially prevent rain and wind from entering the

unit. Exterior door jambs, stops, headers and moldings shall be securely attached to the structure and maintained in good condition without splitting or deterioration. Additionally, exterior doors shall be provided with proper hardware and maintained in proper working condition.

(i) **Exterior decks, stairways, porches, and balconies.** Exterior stairways, decks, porches and balconies, and all appurtenances attached thereto, shall be maintained so that they are structurally sound, in good repair with proper anchorage and capable of supporting the imposed loads.

(j) **Gutters and shutters.** Gutters and shutters and all appurtenances attached thereto, shall be maintained so that they are structurally sound, in good repair with proper anchorage and attachment.

(k) **Deviations.** The Mayor and City Council may on a case-by-case basis approve via special use approval deviations from the standards contained in this section for a single-family or two-family dwelling or a manufactured home. In considering such special uses the Mayor and City Council should consider whether the materials to be utilized or the architectural style proposed for the dwelling unit will be compatible with and harmonious or superior to existing structures in the vicinity.

(l) **Compliance with code.** The dwelling shall be constructed in accordance with all applicable requirements of the Building Code as adopted by the City, or in accordance with standards established by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) for manufactured homes, or in accordance with State law and regulations for industrialized buildings, whichever apply.

Sec. 4-135. Fence or Wall.

(a) **General standards.** Fencing and wall standards (purpose, composition, height, and setback) are presented in Table 4-1, "Fence and Wall Regulations by Zoning District." The community development director may vary these standards, not to exceed two feet in height variation and three feet in setback variation. Other variations shall only be permitted by special use approval.

Table 4-1
Fence and Wall Regulations by Zoning District
P = Permitted S = Special Use X = Prohibited

Regulation	Section Reference	Residential Zoning Districts	Mixed Use and Office Districts	Business and Neighborhood Commercial Districts	Community Commercial and Light Industrial Districts	Heaving Industrial Districts
Fence or Wall Purpose						
Front Yard		S	P	P	P	P
Screening	12-43	P	P	P	P	P
Retaining wall		P	P	P	P	P
Decorative		P	P	P	P	P
Security		P	P	P	P	P
Tree protection, during land development	12-24(c)	P	P	P	P	P
Composition/Type						
Unfinished concrete block wall		X	X	X	X	X
Wall or fence, unapproved materials		X	X	X	X	X
Solid wooden fence		P	P	P	P	P

Block wall with brick or stone facing/finish		P	P	P	P	P
Fence, PVC with like-wood finish		P	P	P	P	P
Fence, picket		P	P	P	X	X
Fence, split rail		P	P	P	X	X
Fence, wrought iron, aluminum, approved metal		P	P	P	P	P
Fence, chain-link		X	X	X	P	P
Fence, chain-link, vinyl coated		P	P	P	P	P
Fence, barbed wire (rear yard only)		X	X	X	X	P
Fence, with barbed or razor wire top strands (rear yard only)		X	X	X	X	P
Fence, electrically charged		X	X	X	X	X
Regulation	**Section Reference**	**Residential Zoning Districts**	**Mixed Use and Office Districts**	**Business and Neighborhood Commercial Districts**	**Community Commercial and Light Industrial Districts**	**Heaving Industrial Districts**
Fencing, temporary, around a lot during construction of a building, as directed for safety or code compliance		P	P	P	P	P
Fence or Wall Height (Feet)						
When required for screening, minimum	12-43	6 feet	6 feet	6 feet	6 feet	8 feet
When required for screening, maximum		6 feet	6 feet	6 feet	10 feet	10 feet
Front yard location		3 feet	6 feet	6 feet	8 feet	8 feet
Rear or side yard location		6 feet	6 feet	6 feet	8 feet	8 feet

(b) **Composition.** In addition to the standards of Table 4-1, fences or walls composed or constructed of exposed concrete block, tires, junk, or other discarded materials shall not be permitted.

(c) **Location.** In addition to the standards of Table 4-1, no fence or wall shall be constructed in a public right-of-way, except that retaining walls and subdivision or project entrance monuments may be placed partially within the right-of-way of a local public or private street if approved by the community development director and public works director as not posing a visibility or other public hazard.

(d) **Subdivision or project identification monuments.** Subdivision or project identification monuments at the entrance to a subdivision or development and wall or fence extensions thereof, where permitted, shall not exceed eight feet in height and columns shall not exceed ten feet in height.

(e) **Tennis court fencing.** A fence surrounding a tennis court is authorized to exceed the height limitations of this Section.

(f) **Maintenance.** Fences and walls shall be maintained, repaired if damaged, and replaced if severely damaged or destroyed.

(g) **Gates.** When gates for vehicular access are required or proposed, said gates shall not be located closer than 25 feet of a public street or road right-of-way, to ensure safe ingress and egress.

(h) **Architectural review.** Fences and walls are subject to the architectural review process as determined by the community development director.

Sec. 4-140. Flea Market.

A flea market shall comply with applicable state law regarding flea market vendors record keeping (O.C.G.A. 10-1-360 et seq.).

Sec. 4-145. Food Truck.

(a) **Motor vehicle tag**. A food truck must have a valid tag from the state's division of motor vehicles.

(b) **Food service rules**. Food trucks shall operate in accordance with the State of Georgia's Rules and Regulations Food Service – Chapter 290-5-14, Manual for Design, Installation and Construction, Section U - Special Food Service Operations.

(c) **Health Department license, permit or approval**. The operator of a food truck shall make application for a license or permit as may be required to the Cobb County Health Department, and the applicant shall submit evidence of health department approval as part of an application for a zoning permit. No food truck shall operate without a health department permit or approval.

(d) **Zoning restrictions and zoning permit**. Food trucks are permitted in certain zoning districts as indicated in article 2, Table 2-3 of this development code. A food truck shall not be located on a vacant lot. A zoning permit for a food truck shall be applied for and must be received from the director of community development prior to operation. No more than two food trucks may operate simultaneously on any lot of record, and no lot shall be approved for more than two spaces or areas for food truck operations.

(e) **City business license**. A city business license shall be required to operate a food truck.

(f) **On-site location requirements.**

1. Food truck operators shall obtain the signed approval of the property owner for each location at which the food truck operates. Such approval must be made available for inspection upon request.

2. The location for the parking and operation of food trucks must be approved by the community development director. The approved location must be marked on a site or plot plan of the lot on which it is located, and the community development director may require the food truck location on the ground to be marked with paint, tape, chalk, or any other easily identifiable material.

3. Food trucks shall be located no less than 10 feet from any fire hydrant, sidewalk, utility box, handicap ramp, or building entrance. No fire lane, vehicular access way, or pedestrian walkway shall be obstructed or encroached upon by the food truck or its operational area. Food trucks shall not park in handicapped accessible parking spaces; a food truck may be permitted to occupy any other private parking space, unless it is determined by the community development director that parking demand may exceed supply at the subject location while the food truck is operating.

(g) **Location restrictions from certain adjacent uses**. Except for properties zoned in the Central Business District (CBD). No food truck shall operate (as measured in a straight

line from property line to closest point of the approved food truck location, where distances are specified):

1. Within 750 feet of a public or private elementary, junior or high school while school is in session.

2. Within 150 feet of a property with a single or two-family residential dwelling.

3. Within 150 feet of a restaurant entrance, unless a waiver is granted by the owner of property on which the restaurant is located.

4. Within 300 feet of a city, county, state or private park or open space, unless a temporary permit is granted by the city manager.

5. On a public or private street, or on in a city park or other open space, unless a temporary permit is granted by the city manager. The city manager is authorized to promulgate additional rules and regulations for the issuance of temporary permits for food trucks on public streets and public properties.

6. On the grounds of a school, unless authorized by the school's administration as part of a school-authorized function.

(h) **Operational Limitations**. Food trucks shall comply with the following:

1. Food trucks shall not operate between the hours of 10:00 p.m. and 7:00 a.m.

2. Food trucks shall be limited in their operation to a maximum of six consecutive hours per day at any single location.

3. Food trucks shall not be parked in an approved operating location overnight and shall not be parked longer than one hour before or after allowable hours of operation; a food truck shall not be in a set-up/start-up or break-down/ close-up mode between the hours of 11:00 p.m. and 6:00 a.m.

4. No food truck shall be permitted to have a vehicular drive-through facility or drive-up window.

5. No amplified microphones or bullhorns shall be permitted as part of the food truck operation.

6. The food truck must be self-contained with regard to water and sanitary sewer needs; no temporary potable water or sanitary sewer shall be permitted.

7. Signage and advertising shall be limited to copy on the food truck itself, and one "sidewalk" sign as defined in the city's sign regulations, not to exceed four square feet of area, located only within the operational area approved by the community development director. Such signage shall be in addition to that approved for the principal use on the lot.

8. All associated equipment, such as trash receptacles and signage, must be confined within the operational area approved by the community development director.

(i) **Sanitation**. Food truck operators shall be responsible for the proper disposal of waste and trash associated with the operation. City trash receptacles shall not be used for this purpose. Operators shall remove all waste and trash prior to leaving each location or as needed to maintain the health and safety of the public.

Sec. 4-150. Fuel Pump.

(a) All gasoline or other fuel pumps, where permitted, shall be located at least forty feet from the side or rear property line and at least 25 feet from any public right-of-way.

(b) Fuel pumps must be located at least 100 feet from any residential zoning district boundary.

Sec. 4-151. Funeral Homes

(a) Funeral Homes that are legally non-conforming that request to add accessory uses to existing floor space or to accessory structures legally established prior to 12/7/2015 without any building expansions will require a Special Use approval.

(b) Accessory crematory, where permitted, must have a minimum exterior renovations subject to administrative design review. All activities associated with said use, must occur entirely within enclosed area.

Sec. 4-155. Golf Driving Range.

In addition to compliance with the requirements of Sec. 4-85 relative to outdoor commercial recreation facilities, a golf driving range shall meet the following requirements:

(a) The minimum lot area shall be 10 acres or 1 acre per tee, whichever is greater.

(b) The depth of a driving range along the driving area shall be at least 350 yards measured from the location of the tees, and the width shall be not less than 200 yards at a distance of 350 yards from the tees.

Sec. 4-160. Guest House.

All guest houses, as defined, shall comply with the following requirements.

(a) **Reference to other requirements.** Guest houses must meet building code requirements and the standards for a dwelling unit as specified in Sec. 4-130 of this article.

(b) **Water and sewer.** The water supply and sanitary sewage disposal system for the lot must be certified by the County Health Department as adequate to support the guest house in combination with the principal dwelling.

(c) **Number.** No more than one guest house shall be permitted on any lot.

(d) **Location.** The guest house shall be erected only in the rear yard of the lot.

(e) **Maximum floor area.** The heated floor area of the guest house shall not exceed 50 percent of the heated floor area of the principal dwelling or 1,200 square feet, whichever is less.

(f) **Use and occupancy.** The guest house shall be used only by the occupants of the principal dwelling on the lot, their non-paying guests, or live-in domestic employees. The guest house shall not be rented.

Sec. 4-165. Heating and Air Conditioning Unit, Accessory.

Heating and air conditioning units accessory to a use shall meet the following requirements:

(a) **Ground locations.** If located on the ground, such units shall not be closer than 10 feet to a side or rear lot line and shall not exceed a height of 10 feet.

(b) **Rooftop locations.** If installed on a roof of any structure, a heating or air conditioning unit shall not exceed the height limitation for the zoning district in which the building is located, and it must be screened from view from the front and side yards. A parapet wall may be utilized for screening purposes.

Sec. 4-170. Home Occupation.

Home occupations may be established in a dwelling as an accessory use to a dwelling as provided in permitted uses requirements for the zoning districts established by this development code (see article 2), subject to compliance with the requirements of this section. The failure to meet one or more of these requirements at any time shall be unlawful and shall be grounds for the city to immediately revoke business registration.

There shall be no exterior indication that the business activity is taking place, including no activity or display associated with the home occupation outside of any building or structure.

(a) **Required registration and/or license.** Any occupational license, including business registration, required by state or city regulations must be obtained.

(b) **Physical limit.** The floor area devoted to the home occupation shall not exceed 25 percent of the gross floor area of the dwelling unit or 500 square feet, whichever is less. This limitation applies to the aggregate floor area of all areas devoted to the home occupation, whether located within the dwelling or in an accessory structure.

(c) **Alteration of exterior of building.** The exterior appearance of the dwelling must remain that of a dwelling. No external alterations inconsistent with the residential use of the building shall be permitted.

(d) **Vehicles.** Vehicles kept on site in association with the home occupation shall be used by residents only, except for the parking of employees as may be permitted by this section. Only vehicles used primarily as passenger vehicles shall be permitted in connection with the conduct of the home occupation. Commercial vehicles are not permitted.

(e) **Visitations.** There shall be no visits by clients or patrons permitted in conjunction with a home occupation; provided, however, that the following exceptions are made for purposes of meeting overriding public goals of education and the care of children: instruction in

music, dance, arts and crafts, and similar subjects, limited to two students at one time; and a family day care home, as defined by this unified development code.

(f) **Incoming vehicles.** Incoming vehicles related to the home occupation, if any, shall at all times be parked off-street within the confines of the residential driveway or other on-site permitted parking.

(g) **Transport of goods.** The transporting of goods by truck in connection with a home occupation is prohibited. There shall be no goods, products, or commodities received on the premises intended for resale or delivery to customers except by U.S. Mail, parcel service, or personal delivery, in which case there shall be no more than 12 deliveries or pick up of items per month in conjunction with a home occupation.

(h) **Sale or display of goods or merchandise.** There shall be no display, and no stock-in-trade nor commodity sold on the premises, in connection with a home occupation.

(i) **Signage.** There shall be no signs permitted in conjunction with a home occupation, although this limitation shall not preclude the property owner from erecting one or more signs permitted on the lot pursuant to article 7 of this unified development code.

(j) **Employees.** Only occupants of the dwelling and one additional full-time employee or two part-time employees shall be authorized to work on the premises in connection with a home occupation.

(k) **Externalities and nuisances.** No home occupation shall generate traffic, sound, odor, vibration, light, or dust that is offensive or that creates a nuisance as detectable at any property line. Home occupations must exclude the use of machinery or equipment that emits sound (e.g., saws, drills, musical instruments, etc.) that is detectable at any property line.

(l) **Uses specifically prohibited.** The following uses are specifically prohibited as home occupations: auto sales or auto repair; restaurants; animal hospitals, veterinary clinics, kennels, or the keeping of animals; funeral homes; retail or wholesale establishments; machine shops; personal service establishments (excluding beauty salons); special event facilities; and lodging services.

(m) **Approval.** All home occupations shall be subject to the approval of the community development director. The applicant for a business registration shall file for approval from the community development director on forms provided by the community development director. Additional information, including a site plan of the lot on which a home occupation is proposed, may be required by the director, along with information describing the nature of the home occupation.

(n) **Variations.** The provisions of this section may be varied pursuant to application by the property owner for a special use, as specified in this development code.

Sec. 4-175. Institutional Residential Living and Care Facility.

(a) Institutional residential living and care facilities as defined shall meet the requirements of the State Board of Health and applicable rules of the State Department of Human Resources.

(b) Plans for any such facilities must receive approval from the County Health Department and state fire marshal's office prior to issuance of a permit for construction and operation. Proof of compliance with such requirements shall be required to be on file with the city prior to business registration approval.

Sec. 4-180. Intermodal Container, Temporary.

During the time a household, institution, business, or industrial establishment is moving in or out of a building on a property, one intermodal container, as defined, may be temporarily placed on the premise of a developed lot for purposes of loading or unloading personal property pertaining to the use on the property subject to the following:

(a) The container may be positioned in a front yard or other location on the property that is accessible for pick up or drop off.

(b) The container shall not remain longer than a period of 32 calendar days.

(c) One additional intermodal container, for a total of two, may be authorized by the community development director for institutional, business, or industrial establishment upon demonstration of evidence of need by the establishment.

Sec. 4-185. Junk or Junked Vehicle.

Except for junk/salvage yards and wrecked motor vehicle compounds as may be permitted by this unified development code, it shall be unlawful to park or continuously store abandoned, wrecked, junked or inoperable vehicles, power-driven construction equipment, used lumber or metal, used appliances, or any other miscellaneous scrap material in a quantity visible from a public street or adjacent or abutting property. No such storage shall be allowed in front yards. Appropriate screening as determined by the community development director, based upon the elevations and uses of surrounding properties, may be used to comply with this provision in side and rear yards.

Sec. 4-190. Junkyard.

In addition to local zoning requirements established by this unified development code, junkyards are subject to compliance with Article 8 of Title 32, O.C.G.A., including location restrictions provided in O.C.G.A. 32-6-241 (Reference: O.C.G.A. 32-6-240 et seq.). (Additional Reference: Rules of the Georgia Department of Transportation, 672-8 Rules and Regulations Governing the Control of Junkyards).

Sec. 4-195. Kennel.

(a) The minimum lot size for a kennel shall be 2 acres.

(b) No kennel shall hereafter be established until or unless any license required by the Georgia Commissioner of Agriculture is issued and a copy of the license is provided to the community development director prior to commencement of operations. Such use shall also comply with any rules adopted by the Georgia Commissioner of Agriculture pursuant to the Georgia Animal Protection Act, O.C.G.A. 4-11-14. (Additional Reference: Rules of

Georgia Department of Agriculture, Animal Protection Division, Chapter 40-13-13 Animal Protection).

Sec. 4-200. Livestock and Animal Quarters.

Livestock and animal quarters shall meet the following requirements:

(a) **Permitted livestock.** The keeping of a horse on a residential property shall require a minimum lot size of two acres for each horse and is limited to three horses. The keeping of cattle, sheep, or other authorized livestock (not including poultry and pigs) shall require a minimum lot size of five acres and is limited to six livestock heads.

(b) **Animal quarters.** Any building or structure devoted to the quartering of permitted livestock, including barns, stables, corrals, and pens and any others customarily appurtenant to animal raising shall not be located closer than 60 feet from a property line abutting a residential use or residential zoning district.

(c) **Fencing.** All livestock shall be confined within a fully fenced area.

(d) **Poultry (aka, "Backyard Chickens").** Poultry means a female pullet or hen of the Gallus domesticus and is also referred to as backyard chickens which are or may be raised for the purpose of non-commercial production of eggs or companionship as a pet. This use is subject to the following standards:

1. The poultry shall be kept/maintained within a covered, predator-proof enclosure and fenced area set back a minimum of 20 feet from all property lines and no less than 50 feet from any residential structure on an adjacent property and not visible from public right of way;

2. The owner of the poultry shall keep the property and enclosure maintained in a fashion that eliminates odors, pollution or other negative effects resulting from the poultry. No perceptible odor from the hens or enclosure shall be present at the property line;

3. The enclosure and fenced area shall provide adequate ventilation, adequate sun, and shade and must be constructed in such a manner to resist rodents, wild birds, and predators, including cats and dogs;

4. The enclosure shall include an area darkened for roosting and sleeping with the intent to minimize or eliminate noise at night;

5. The poultry shall not cause a nuisance, as defined by state law;

6. There shall be a maximum number of hens per lot as follows:

Size of Lot	Maximum
0.5 acre to 1 acre lot	3 hens
1.01 to 2 acre lot	6 hens
2.01 to 3 acre lot	9 hens
3.01 or more acre lot	12 hens

7. No rooster or crowing hens are permitted;

8. No breeding of chickens shall occur on the property;

9. No hen shall be used or trained for the purpose of fighting for amusement, sport or financial gain;

10. All stored food for the hens must be kept indoors or in a weather resistant container assigned to prevent access by animals. Uneaten food must be removed daily;

11. Provision shall be made for the storage and removal of manure. All manure for composting or fertilizing shall be contained in a well-aerated garden compost pile. The enclosure and surrounding area shall be kept free from trash and accumulated droppings; and

12. The slaughter of any hen on site is strictly prohibited.

Sec. 4-205. Manufactured Home.

Manufactured homes, if permitted in the city, shall comply, as applicable, with Rules of the Comptroller General, Safety Fire Commissioner, Chapter 120-3-7, Rules and Regulations for Manufactured Homes.

Sec. 4-210. Manufactured Home, Temporary (Construction).

A manufactured home may be parked and occupied in any commercial or industrial zoning district for a period not to exceed 12 months where a building permit has been approved and where its primary function is that of an office or for storage or related purposes, subject to special use approval. A manufactured home may be parked and occupied in any zoning district on property owned or leased by a church or a school for a period not to exceed 12 months where its primary function is that of an office or classroom or for storage or related purposes, provided that not more than one manufactured home for each two acres of vacant land may be located thereon, subject to a special use approval. The following additional requirements shall apply:

(a) **Approved sewer or septic system.** The manufactured home shall be connected to a public sanitary sewer or septic system with capacity available as approved by the County Health Department.

(b) **Setbacks.** The manufactured home shall meet the minimum required setbacks for principal buildings for the zoning district in which it is located.

(c) **Restrictions.** It shall be unlawful for a person to occupy a manufactured home pursuant to this section except as approved under the original terms of special use approval. The manufactured home shall not be rented.

(d) **Conditions.** The community development director may place conditions on the approval such as skirting of the structure, landscaping, and appropriate access to the building.

(e) **Removal.** The community development director shall order the removal of the manufactured home upon issuance of a certificate of occupancy for the permanent dwelling, and the owner of real property shall remove the manufactured home from the lot within 30 calendar days of the issuance of a certificate of occupancy.

Sec. 4-215. Manufactured Home, Temporary (Medical Hardship).

A manufactured home may be parked and occupied in any residential area where a medical hardship (as defined) exists, for the health care of a member of the immediate family, subject to the requirements of this section.

(a) **Evidence of need.** The applicant for a manufactured home established pursuant to this Section shall provide evidence to the community development director from the county health department or an affidavit or certified statement of a physician that a medical hardship exists. Annually thereafter, the owner shall be required to provide same evidence that medical hardship still exists.

(b) **Evidence of insufficiency of principal dwelling.** It must be shown to the satisfaction of the community development director that the dwelling on the premises does not contain sufficient space or facilities to accommodate the proposed occupant of the manufactured home.

(c) **Setbacks.** The manufactured home shall meet the minimum required setbacks for principal buildings for the zoning district in which it is located.

(d) **Water and sewer.** The County Health Department must certify that existing or proposed water, sanitary sewer, and/or septic tank facilities are adequate to serve both the principal dwelling and the accessory dwelling unit.

(e) **Special use.** Special use approval shall be required in accordance with the requirements of this development code.

(f) **Removal.** The community development director shall order the removal of the manufactured home upon knowledge that a medical hardship no longer exists, in which case the owner shall remove the manufactured home from the lot within 30 calendar days of written notice by the community development director that removal is required.

Sec. 4-220. Manufacturing or Fabrication Accessory to Retail Use.

The manufacturing or fabrication of products sold at retail on the premises, such but not limited to jewelry or pottery, is permitted as an accessory use to a permitted principal retail use, provided that the area used for manufacturing or fabrication shall occupy no more than 25 percent of the gross floor area of the establishment space or 1,000 square feet, whichever is less. All products manufactured or fabricated on the premises shall only be sold on the premises.

Sec. 4-225. Mobile Home.

A mobile home as defined (i.e., manufactured prior to June 15, 1976) is not permitted in any zoning district.

Sec. 4-230. Outdoor Display and Storage.

a) **Outdoor Display.** Merchandise or goods sold at retail may be displayed outside a building or structure on the premises of a permitted commercial establishment, subject to the following limitations:

1. **Location.** Merchandise or goods on display outdoors must be located within 20 feet of the front wall of the principal building and shall be no closer than 20 feet to any property line. Properties in the CBD zoning district may have outdoor display locations closer than 20 feet to the right-of-way if approved by Mayor and City Council via architectural design approval (see Sec. 5-15 of this development code).

2. **Area limit.** The total square footage of outdoor area devoted to outdoor display space shall not exceed two square feet for every linear foot of principal building frontage. If there is more than one principal building, only the building closest to the street right-of-way shall be included for purposes of computing allowable outdoor display space.

3. **New and used car dealers (where permitted).** Motorized vehicles that are in good running condition free from exterior damage or substantial wear may be displayed but this permission shall not include storage of customer vehicles associated with automobile repair operations.

4. **Specified materials.** Garden and lawn power equipment, including utility vehicles (where permitted) and similar items may be displayed if the display area does not exceed 540 square feet in area. Materials such as lumber, patio pavers and decorative stone; yard furniture such as benches, swings and bird baths; and yard maintenance materials such as fertilizer, mulch, straw and seed must be maintained in side or rear yard and not visible from the public right of way.

5. **Temporary sales promotions.** All other outdoor display of merchandise or goods shall be conducted on a temporary basis associated with special sales promotions. Such display shall be for a period not to exceed 2 weeks, and shall not occur more often than 3 times per year.

b) **Outdoor Storage.**

1. The outdoor storage of goods, material, merchandise or vehicles not otherwise on display for customer selection or direct sale or lease to customers in any of the office/commercial zoning districts is prohibited, except in the CRC zoning district.

2. In the CRC zoning district, outdoor storage must be located in the rear yard, and the outdoor storage area must be screened from view by an opaque fence or free-standing wall no less than 8 feet in height, a special use permit shall be required.

3. For automotive repair uses (where permitted), no vehicle shall remain on premises for a period exceeding five days unless parts have been ordered, in time not to exceed 30 days. The total number of vehicles on the premises waiting for parts shall not exceed two vehicles per service bay at any time. No junk vehicles shall be permitted on the premises at any time.

4. In industrial zoning districts, any storage use operated as a principal use or accessory use on a property shall be contained entirely within a building or shall be screened from view by an opaque fence or free-standing wall no less than 8 feet in height. Equipment operated by the principal use may be stored in an industrial district under a semi-permanent awning structure in a side or rear yard subject to the approval of the community development director.

5. In industrial districts, no more than 6 tractor trailers and no more than 6 construction dumpsters shall be permitted, and such storage requires a minimum lot size of 10 acres.

Sec. 4-235. Accessory Uses of Parking Lots and Loading Areas.

(a) **Generally.** Parking spaces and loading areas provided to meet the requirements of this article, along with the aisles and driveways necessary to provide access to those spaces and loading areas, shall not be used for any purpose other than the temporary parking of vehicles or the loading and unloading of materials, equipment, merchandise, etc., except as provided or referenced in this section.

(b) **Display of goods.** Merchandise or goods sold at retail shall not be displayed or stored in parking spaces, maneuvering areas, or loading areas.

(c) **Repair.** Parking lots and loading areas shall not be used for the repair or dismantling of any vehicle, equipment, materials, or supplies.

(d) **Collection bin.** Collection bins are permitted to be located within parking spaces per Sec. 4-80 but only if the spaces occupied by collection bin(s) are not required to meet the minimum parking for the use or uses on the site.

(a) **Drive-through lane.** Drive-through lanes as regulated by Sec. 4-115, or drive-through escape lanes, may encroach on maneuvering spaces but not parking spaces or access easements.

(b) **Food truck.** Food trucks may be permitted to occupy a private parking space subject to the provisions of Sec. 4-145, paragraph f.

(c) **Intermodal container.** An intermodal container placed temporarily, established pursuant to Sec. 4-180, may encroach on required parking spaces or maneuvering areas.

(d) **Vehicle for sale**. Parking and loading areas shall not be used to store vehicles for sale, except in cases where automobile sales is a permitted use in the zoning district in which the property is located; provided, however, that the sale of one personal vehicle registered to the owner or tenant of the property shall be allowed to occupy a parking space no more the 30 days in any calendar year.

Sec. 4-240. Pet Dealer.

No pet dealer shall hereafter be established until or unless a license if required by the Georgia Commissioner of Agriculture is issued and a copy of the license is provided to the community development director prior to commencement of operations. Such use shall also comply with any rules adopted by the Georgia Commissioner of Agriculture pursuant to the Georgia Animal Protection Act, O.C.G.A. 4-11-14. (Additional Reference: Rules of Georgia Department of Agriculture, Animal Protection Division, Chapter 40-13-13 Animal Protection).

Sec. 4-246. Recreational Vehicle and Boat Storage Facility.

Recreation Vehicle and Boat Storage Facility is permitted only in the HI zoning district. Design review approval shall be required by Mayor and Council. Minimum standards for the use, site development, construction, and placement of a boat and recreational vehicle storage facilities shall be as follows:

(a) General regulations.

1. No wholesale or retail sales shall be permitted. A boat and recreational vehicle storage facility included within HI zoned property shall have a minimum of 1 acre devoted for such use.

2. Except as otherwise specifically provided in this section, all property stored on site shall be on a concrete or asphalt surface.

3. Boat and RV storage shall be only for vehicles licensed for personal use and there shall be no storage of commercially licensed vehicles.

4. Boat and RV storage shall include enclosed trailers that store recreational vehicles for personal use.

5. All vehicles and trailers shall have current tags and registrations. There shall not be any storage of junk or inoperable vehicles.

(b) **Access.** A boat and recreational vehicle storage facility shall be located on a lot that gains access to a local non-residential, major collector, or arterial street as determined by the Community Development Director based on review of applicable plans.

(c) **Outside storage.** Open storage of recreational vehicles and dry storage of pleasure boats of the type customarily maintained by private individuals for their personal use shall be permitted within property zoned HI, provided the following requirements are met.

1. Such storage shall take place only within a designated area. The area so designated shall be clearly delineated upon the site plan submitted for approval.

2. The storage area shall be entirely screened from view from adjacent residential and office areas and public streets by buildings, fencing or by the installation of a 6-foot-high privacy fence. If existing vegetation, replanted buffers or topography provides the required screening, then this fence requirement may be eliminated.

3. Such storage area shall not be located between property lines and minimum required building setbacks.

4. No vehicle repair shall be permitted on site. Boats stored on site shall be stored upon wheeled trailers. No dry stacking of boats shall be permitted on site.

d) Development regulations.

1. Perimeter fence. The self-service storage facility shall be enclosed by a minimum 6-foot-high fence. Said fence shall be constructed of either wood or chain link material. Said fence shall be set back a minimum of 20 feet from the side and rear property lines if adjacent to a residentially zoned property. Fences and walls in the front yard shall adhere to the required front yard setback.

2. Maximum building height. The maximum height of a building or structure for the storage of recreational vehicles or boats shall be 1 story high a maximum of 20 feet unless additional height is approved by the Mayor and City Council. Any covered parking shall be located in such a way that it is unobtrusive from adjacent roadways or adjacent residential properties.
3. Parking requirements. Designated customer parking is not required; however if provided, a minimum of 5 parking spaces shall be provided adjacent to the facility's leasing office, if a leasing office is located on site. Interior parking shall be provided in the form of aisle ways adjacent to parking spaces for vehicles or boats. These aisle ways may be used for both circulation of traffic and user parking while using the storage bays. The minimum width of these aisle ways shall be 24 feet for two-way traffic and 20 feet for one-way traffic. Prior to issuance of a certificate of occupancy, the traffic flow patterns in the aisle ways shall be clearly marked. Marking shall consist at a minimum of the use of standard directional signage and painted lane markings with arrows. In order to assure appropriate access and circulation by emergency vehicles and equipment, the turning radii of the aisle ways shall be approved by the Cobb County Fire Department.

(e) Landscape requirements.

1. Landscaping shall be provided in areas between the property lines and the required fencing. Such areas shall be designated as perimeter landscape strips. Landscaping shall be designed, placed, and maintained in such a manner as not to interfere with traffic visibility.

2. A landscape strip of at least 20 feet in width shall be provided along all street frontages.

3. The side and rear yard setbacks shall remain in their natural state or be re-landscaped with vegetation.

4. If the existing vegetation is inadequate to buffer adjoining residential or office and institutional development, an 8-foot-high fence or wall shall be installed along the interior property lines and street setbacks.

5. The following minimum planting requirements shall apply as follows and shall supersede the landscape buffer/screening requirements of the HI zoning districts: A minimum of 1 tree shall be planted for each 20 feet of perimeter landscape strip; immediately upon planting, trees shall be a minimum of 10 feet in height; if a hedge is to be installed in the perimeter landscape strip, the hedge shall be 24 inches in height upon planting, with the material planted every 24 inches on center; all planting shall be maintained in good condition by the property owner; the community development director or Mayor and City Council may allow existing vegetation, where warranted, to substitute for landscape, buffer, and screening requirements of this subsection.

(f) Dumpsters and trash receptacles.

Dumpsters and trash receptacles shall be located where they are not visible from adjacent residentially zoned properties and shall be adequately screened from view from all other adjacent properties and streets.

Sec. 4-245. Recreational Vehicle.

The occupancy or parking of recreational vehicles, as defined, in areas other than designated recreational vehicle parks and campgrounds is prohibited, except as specifically authorized in this section.

(a) **Time limit.** The use of a recreational vehicles in an area other than a designated recreational vehicle park or campground is permitted for seven consecutive days or less during any 180-day period. Any use of a recreational vehicle for longer or more frequent periods of time may be considered by the Mayor and Council only upon application for special use approval.

(b) **Location.** The recreational vehicle shall be parked in a side or rear yard only. Recreational vehicles to be permanently stored on the premises shall be located within a carport or garage, or in the rear yard of the premises.

(c) **Waste disposal.** All sewage and waste shall be disposed at designated disposal facilities and shall not create a hazard to health or the environment.

Sec. 4-250. Retail Package Sales of Distilled Spirits.

No new retail package liquor licensed place of business shall be located, and no existing retail package liquor licensed place of business engaged in the retail package sales of distilled spirits shall be relocated, unless it is established in a location at least 500 yards from any other business licensed to sell package liquor at retail, as measured by the most direct route of travel on the ground; provided, however, that this limitation shall not apply to any hotel licensed under this OCGA 3-4 (Reference: O.C.G.A. 3-4-49).

Sec. 4-255. Riding Stable.

(a) **Minimum area.** In zoning districts where permitted, a riding stable shall have an area of not less than 2 acres for each animal to be ridden which is kept on the property.

(b) **State regulations and permit.** No stable shall hereafter be established until or unless a license if required by the Georgia Commissioner of Agriculture is issued and a copy of the license is provided to the community development director prior to commencement of operations. Such use shall also comply with any rules adopted by the Georgia Commissioner of Agriculture pursuant to the Georgia Animal Protection Act, O.C.G.A. 4-11-14.

(c) **Animal quarters.** Any building or structure devoted to the quartering of animals to be commercially ridden, including barns, stables, corrals, and pens and any others customarily appurtenant to animal raising shall not be located closer than 60 feet from a property line abutting a residential use or residential zoning district.

(d) **Fencing.** The area devoted to riding and confinement of animals ridden shall be fenced.

Sec. 4-260. School, Private.

A private school of any sort defined by or permitted by this unified development code shall be subject to the following requirements:

(a) **Buffer.** A private school that constitutes the only principal use on the lot shall provide and maintain a buffer with a minimum width of 30 feet abutting a residential zoning district. Said buffer shall meet or exceed specifications of article 12 of this development code.

(b) **Recreational fields.** A private school that constitutes the only principal use on the lot shall be permitted to have unlighted recreational fields; lighted recreational fields accessory to a private school shall require special use approval.

Sec. 4-265. Self-Service Storage Facility.

Minimum standards for the use, site development, construction, and placement of self-service storage facilities and mini-warehouses shall be as follows:

(a) **General regulations**.

1. No wholesale or retail sales shall be permitted. A self-service storage facility included within a planned commercial or planned industrial development shall have a minimum of 1 acre devoted exclusively for such use.

2. The only commercial activities permitted exclusively on the site of the self-service storage facility shall be rental of storage bays and pick-up and delivery of goods or property in dead storage.

3. Storage bays shall not be used to manufacture, fabricate, or process goods; service or repair vehicles, boats, small engines or electrical equipment, or to conduct similar repair activities; conduct garage sales or retail sales of any kind; rehearsing or practicing utilizing band instruments; conversion to an apartment or dwelling unit; or to conduct any other commercial or industrial activities on site. 771B Residential quarters for security purposes may be established on the site in accordance with Section 4-65 of this development code.

4. Individual storage bays within a self-service storage facility shall not be considered a premise for the purpose of assigning a legal address in order to obtain an occupational license or any other governmental permit or licenses to do business.

5. Except as otherwise specifically provided in this section, all property stored on site shall be entirely within enclosed buildings. Storage of flammable liquids, highly combustible or explosive materials, or hazardous chemicals are prohibited.

(b) **Access.** A self-service storage facility shall be located on a lot that gains access to a local non-residential, major collector, or arterial street as determined by the community development director based on review of applicable plans.

(c) **Development regulations.**

1. **Special Use permit shall be required**.

2. **Perimeter fence or wall.** The self-service storage facility shall be enclosed by a minimum 6 foot high fence or wall. Said fence or wall shall be constructed of either brick, stone, masonry units, wood, chain link, cyclone, or other similar materials. Said fence or wall shall be set back a minimum of 20 feet from the side and rear property lines. Fences and walls in the front yard shall adhere to the required front yard setback.

3. **Separation between storage buildings.** If separate buildings are constructed, there shall be a minimum of 10 feet separating the individual buildings. Buildings shall be situated or screened so that overhead access doors do not face public roads, or residentially- or office and institutionally-zoned property.

4. **Maximum bay size.** The maximum size of a storage bay shall be 450 square feet.

5. **Maximum building height.** With the exception of the structure used for security quarters, the maximum height of a self-service storage facility shall be 1 story unless additional stories are approved by the Mayor and City Council. The height of the building shall not exceed 20 feet. Roof-mounted air conditioning and other equipment if utilized shall be screened from view. The combined height of the building and the parapet wall shall not exceed 25 feet. All self-service storage facilities shall utilize gable roofs with not less than a 2:12 slope.

6. **Parking requirements.** Designated customer parking is not required; however, a minimum of 5 parking spaces shall be provided adjacent to the facility's leasing office, if a leasing office is located on site. Interior parking shall be provided in the form of aisle ways adjacent to the storage bays. These aisle ways may be used for both circulation of traffic and user parking while using the storage bays. The minimum width of these aisle ways shall be 24 feet for two-way traffic and 20 feet for one-way traffic. Prior to issuance of a certificate of occupancy, the traffic flow patterns in the aisle ways shall be clearly marked. Marking shall consist at a minimum of the use of standard directional signage and painted lane markings with arrows. In order to assure appropriate access and circulation by emergency vehicles and equipment, the turning radii of the aisle ways shall be approved by the Cobb County Fire Department.

(d) **Landscape requirements.**

1. Landscaping shall be provided in areas between the property lines and the required fencing. Such areas shall be designated as perimeter landscape strips. Landscaping shall be designed, placed, and maintained in such a manner as not to interfere with traffic visibility.

2. A landscape strip of at least 20 feet in width shall be provided along all street frontages.

3. The side and rear yard setbacks shall remain in their natural state or be re-landscaped with vegetation.

4. If the existing vegetation is inadequate to buffer adjoining residential or office and institutional development, an 8 foot high fence or wall shall be installed along the interior property lines and street setbacks.

5. The following minimum planting requirements shall apply as follows and shall supersede the landscape buffer/screening requirements of the CRC, LI, and HI zoning districts: A minimum of 1 tree shall be planted for each 20 feet of perimeter landscape strip; immediately upon planting, trees shall be a minimum of 10 feet in height; if a hedge is to be installed in the perimeter landscape strip, the hedge shall be 24 inches in height upon planting, with the material planted every 24 inches on center; all planting shall be maintained in good condition by the property owner; the community

development director or Mayor and City Council may allow existing vegetation, where warranted, to substitute for landscape, buffer, and screening requirements of this subsection.

(e) **Dumpsters and trash receptacles.** Dumpsters and trash receptacles shall be located where they are not visible from adjacent residentially-zoned properties and shall be adequately screened from view from all other adjacent properties and streets.

(f) **Expansion.** Expansion of an existing self-service storage facility may be permitted with special use approval provided such expansion is located within a CRC zoning district that adjoins the existing self-service storage facility.

Sec. 4-266. Self-Service Storage Facility, Climate-Controlled.

The following minimum standards shall apply to climate controlled self-service storage facilities:

(a) Building height should not exceed those of adjacent buildings or impact the view shed of adjacent residential property.

(b) Floor area ratio shall be as determined appropriate by the Mayor and Council.

(c) All units shall be accessed through a main or central entrance.

(d) All windows or similar architectural features must be one way and provide for an opaque screen from view outside the building.

(e) Architectural style and design shall be similar or complementary to the predominant architectural design of other commercial uses within the activity center. The style and design shall be approved by the Mayor and Council. Any roof-mounted utilities or building components must be screened from view of adjoining properties and public right of way.

(f) There shall be no outside storage allowed nor overnight and/or long-term parking of heavy equipment, commercial equipment, or parking of construction or related equipment allowed.

(g) There shall be no storage of recreational vehicles and no dry storage of pleasure boats of any type.

(h) There shall be no storage of flammable liquids, highly combustible or explosive material or hazardous chemicals.

(i) No units within the facility shall be used for or considered to be premises for the purpose of assigning a legal address in order to obtain an occupational license or any other government permit or license to do business.

(j) There shall be no resident manager or any type of overnight accommodations for such use.

(k) Landscape plans shall be submitted and approved by staff with an emphasis on planting within the parking facilities.

(l) One parking space shall be provided for every 80 individual storage units.

(m) The loading area, including adequate turn around space for a tractor trailer vehicle, must be screened by a permanent architectural or landscape feature or as may be approved by the Mayor and Council if not located to the side or rear of the structure.

(n) A lighting plan shall be submitted to and approved by the Mayor and Council.

(o) No units shall be used to manufacture, fabricate or process goods, to service or repair vehicles, boats, small engines or electrical equipment, or to conduct similar repair activities, or to conduct garage sales or retail sales of any kind, to rehearse or practice utilizing band instruments, or for conversion to apartment or dwelling unit, or to conduct any other commercial or industrial activities on the site.

(p) Dumpster areas and detention shall be sufficiently screened from view of adjoining properties and public right of way.

(q) Hours of operations shall be established by the Mayor and Council, considering the operations hours of surrounding businesses.

(r) Special use shall be required within a CRC zoning district.

Sec. 4-270. Semi-trailer or Commercial Vehicle Parking.

The parking or storage of a semi-trailer, as defined, or a commercial vehicle, is prohibited in residential zoning districts. Such parking shall not be authorized in any other zoning district except where such use is permitted as a principal or accessory use as determined by the community development director.

Sec. 4-272. Sidewalk Café/Right of Way encroachment Permit – Restaurants

Sidewalk Café means a portion of an immobile retail food establishment located on a public right-of-way, whether directly adjacent to, or in close proximity to, the retail food establishment. Sidewalk café also constitutes private establishment that are not adjacent to the right-of-way but are adjacent to the establishment parking lot.

a) A permit, which shall be known as a Sidewalk Café permit, shall be required to operate a Sidewalk Café. The application review fee for a Sidewalk Café approval shall be $25.00.

b) The applicant shall provide the following information on the application to Community Development:

1) Proof that the applicant holds a valid retail food establishment license issued to the establishment that will provide food for the Sidewalk Café.

2) A proof of insurance as required by this article.

3) A plan for the Sidewalk Café, complying with applicable regulations, and demonstrating that the sidewalk café shall not unreasonably interfere with: adequate pedestrian flow, access to building entrances; pedestrian and traffic safety; and the aesthetic quality of the surrounding area.

c) **Insurance required**. Each applicant for a Sidewalk Café permit shall furnish a certificate of insurance evidencing commercial general liability insurance with limits of not less than

$500,000.00 per occurrence, $1,000,000.00 in the aggregate combined single limit, for bodily injury, personal injury and property damage liability. The establishment shall provide written notice to be given to the City of Powder Springs if coverage is substantially changed, canceled or non-renewed.

d) **Assignment or transfer prohibited**. No permittee shall assign or transfer a Sidewalk Café permit.

e) **Permit for one retail food establishment only.** A Sidewalk Café shall be for the exclusive use of the licensed retail food establishment stated on the application. Sharing or other joint use of a Sidewalk Café location by more than one retail food establishment shall not be permitted.

f) **Permit for food and alcoholic beverage service only.** A Sidewalk Café permit shall only authorize food and alcoholic beverage service at the Sidewalk Café. Regardless of what other activity may take place inside the establishment pursuant to license or permit, such activity shall not be allowed at the Sidewalk Café by virtue of the Sidewalk Café permit.

OPERATIONAL CONDITIONS.

a) Sidewalk Cafés permitted under this article shall not operate earlier than 8:00 a.m. nor later than 12:00 midnight.

b) Sidewalk Cafés permitted under this article shall not play music, whether live or recorded, nor allow music to be played at the Sidewalk Café, other than through headphones.

c) The operator of a Sidewalk Café shall install and maintain a physical boundary separating the permitted outdoor seating from the remainder of the public way. The operator shall leave six feet of public way unobstructed for pedestrian passage;

d) **Alcoholic beverage service--requirements**. If alcoholic beverages are served at the Sidewalk Café, the operator must be validly licensed under the code for such sales. Alcoholic beverages supplied by the customer or by any person other than the permittee will not be allowed at Sidewalk Café.

e) **Compliance with code and rules and regulations required.** All holders of a Sidewalk Café permit and their employees shall be subject to and comply with all applicable requirements and standards for retail food establishments contained in the code, as amended, and the rules and regulations promulgated hereunder, and all laws, rules and regulations pertaining to the sale of alcoholic beverages.

f) **Sidewalk café boundaries.** Sidewalk café boundaries must not interfere with the accessibility of the public right of way on the sidewalk.

1) Sidewalk café boundaries must be positioned so that at least 6 feet separates the outer edge of the barrier from obstacles such as street signs, planters, newspaper dispensers, fire hydrants and bus shelters. Where no obstacles are present, 6 feet must separate other edge of the barrier from the edge of the sidewalk (not including the curb).

2) Sidewalk café boundaries must be constructed so that they are free of objects that protrude for example hanging lanterns, signs or other objects mounted on or alongside the café fences or barricades.

3) Sidewalk café boundaries must be constructed so that they provide cane detection for pedestrians who are blind or have visual impairments. A continuous uninterrupted fence or barricade meets this requirement if it has a continuous, firm barrier at 27 inches or less above ground. If the fence or barricade is not continuous or if the barricade consists of posts or other objects connected by hanging ropes, chains or nylon strips, a detectable barrier must run continuously along the pedestrian side of the barricade or fence at a height of 27 inches or less.

4) Accessible tables At least 5% but not less than one of the tables in each sidewalk café seating area must be accessible to people with disabilities, including those who use wheelchairs. Accessible tables must be located on an accessible route (see below) and should be dispersed throughout the café seating area

Sec. 4-275. Solar Energy System, Building Mounted.

A building-mounted solar energy system shall be subject to the following regulations:

(a) Placement. No solar energy system shall be mounted or affixed to any freestanding wall or fence. Panels and building mounts shall be installed per manufacturer's specifications. For aesthetic reasons, a solar energy system shall not be located on the front slope of a pitched roof of a principal residential structure in residential zoning districts unless no other location for the solar energy equipment is feasible. The city may require sun and shadow diagrams specific to the installation to ensure compliance with this provision.

(b) Height. Building-mounted solar panels or systems shall not exceed four feet above the height of any principal building on the site.

(c) Permits and code compliance. A building permit shall be required for installation of all building-mounted solar energy systems, except for flush-mounted panels.

Sec. 4-280. Solar Energy System, Ground Mounted.

A solar energy system, ground mounted, shall be subject to the following regulations:

(a) Placement. A ground-mounted solar energy system shall not be located within the required front yard of a lot. A ground-mounted system shall not be located over a septic system, leach field area or identified reserve area unless approved by the health department. If located in a floodplain or an area of known localized flooding, all panels, electrical wiring, automatic transfer switches, inverters, etc. shall be located above the base flood elevation. Panels and ground mounts shall be installed per manufacturer's specifications.

(b) Maximum area coverage. For residential properties, a ground-mounted solar energy system shall not exceed 25% of the footprint of the principal building served. For non-residential properties, a solar energy system shall not exceed 50% of the footprint of the principal building served.

(c) Height. The maximum height of a ground-mounted solar energy system shall not exceed the maximum building height for accessory buildings in the zoning district in which it is located, or 20 feet, whichever is less.

(d) Permitting. A building permit is required for any ground-mounted solar energy system and for the installation of any thermal solar energy system.

Sec. 4-285. Subdivision Sales Office, Temporary.

A building permit and certificate of occupancy may be issued for the temporary use of one of the permanent homes in a subdivision, or for the temporary placement of a manufactured home or industrialized building on one of the preliminarily platted lots within the subdivision as a real estate sales office for sale of the final platted lots for new homes to be built and developed within the boundaries of the subdivision. Such sales may only occur following approval of a preliminary plat in accordance with article 15 of this development code, and subject to meeting the requirements of this section.

(a) If the temporary sales office is a manufactured home or industrialized building, it shall be removed within 30 days after certificates of occupancy or connections to permanent power have been approved on 90 percent of the lots in the subdivision.

(b) If the temporary sales office is in one of the homes in the subdivision, the sales office shall be discontinued within 30 days after certificates of occupancy or connections to permanent power have been approved on 90 percent of the lots in the subdivision, in which case the building shall be permitted to be sold and occupied as a dwelling.

Sec. 4-290. Surface Mine, Quarry, or Other Resource Extraction.

(a) **State regulation.** Surface mining, if permitted per this unified development code, shall also comply as applicable with the Georgia Surface Mining Act of 1968 (O.C.G.A. 12-4-70 et seq.), and any rules and regulations promulgated thereunder by the Georgia Department of Natural Resources, Environmental Protection Division (Reference: Rules of Georgia Department of Natural Resources Environmental Protection Division, Chapter 391-3-3, Surface Mining).

(b) **Permit submission.** A copy of the state permit required by O.C.G.A. 12-4-75 shall be submitted to the city prior to the authorization of operations.

(c) **Perimeter buffer.** The extraction area shall be surrounded by a natural buffer, replanted where sparsely vegetated, with a minimum width of 100 feet, undisturbed except for that required to install required fencing.

(d) **Fencing.** The removal area shall be completely enclosed with a fence not less than 6 feet in height. The fence may be located at or near the property line, within the buffer required by this Section.

(e) **Setback.** Surface mines, quarries, and resource extraction areas and activities shall not be established within 500 feet of a residential zoning district or lot containing a dwelling or within 200 feet of any other property line.

Sec. 4-295. Swimming Pool.

A swimming pool, whether established as an accessory use to a single-family dwelling or for common use as a part of an amenity or community recreation area, shall comply with the following regulations:

(a) **Reference to regulations.** Applicable requirements of the building code and swimming pool code if adopted, and health department rules and regulations.

(b) **Enclosure.** Swimming pools must be enclosed by a fence or wall at least four feet in height.

Sec. 4-300. [Reserved.]

Sec. 4-305. Truck or Trailer Rental, Accessory.

The rental of moving trucks or trailers may be operated as an accessory use to a self-service storage facility or open air business in a commercial or industrial zoning district, provided that no more than one truck or trailer is permitted in the front yard for display purposes and no more than six trucks or trailers are permitted in any side yard.

Sec. 4-310. Underground Gas Storage.

The underground storage of natural or manufactured gas shall comply as applicable with the Georgia Underground Gas Storage Act (O.C.G.A. 46-4-50 et seq.), including an application made to the Public Service Commission and a public hearing by the Commission prior to installing an underground reservoir for natural or manufactured gas (Reference: O.C.G.A. 46-4-53), and issuance by the commission of an approval or conditional approval order (Reference: O.C.G.A. 46-4-55). Any authorized underground storage of natural or manufactured gas shall also comply with any rules and regulations for underground reservoirs adopted by the Georgia Board of Natural Resources (Reference: O.C.G.A. 46-4-60).

Sec. 4-315. Utility Installation, Removal, and Relocation.

The City of Powder Springs may require permits and establish reasonable regulations for utility installation, removal, and relocation; provided, however, that the city's regulations shall not be more restrictive with respect to utilities affected thereby than are equivalent regulations promulgated by the department [of Transportation] with respect to utilities on the state highway system under authority of Code Section 32-6-174 (Reference: O.C.G.A. 32-4-92(a)(7)).

Sec. 4-320. Vehicle Emission Inspection.

In zoning districts where permitted, whether operated as a principle use or an accessory use, a vehicle emission inspection station or facility shall be meet the following requirements:

(a) **Building.** It shall be contained within a fully enclosed building. Temporary structures such as tents or freestanding metal structures shall not comply with this requirement.

(b) **Storage and repair.** No outside storage of parts, automotive repair, or inoperable vehicles shall be permitted.

(c) **Parking and queuing.** There must be sufficient on-site parking and queuing space to serve the facility.

Sec. 4-325. Work Force Housing.

For multifamily residential developments, Workforce Housing Credit shall be provided in accordance with the following provisions:

i. Workforce credit shall apply to 3% of the total units, which shall be spread approximately pro rata across all unit types (# of bedrooms).

ii. Qualified Tenants must be employed by the City of Powder Springs, Cobb County or another municipality located within Cobb County, or must be employed by a medical facility located within the City of Powder Springs or Cobb County. Additionally, such Qualified Tenants shall have incomes that do not exceed 100% of the Area Median income (AMI) (as published annually by HUD).

iii. The workforce credit shall be equal to an amount of 20% of market rent. The Qualified Tenants initially shall pay 80% of the applicable market rent.

iv. Should the property be sold or transferred, the workforce credit program shall carry with the property to the subsequent owner.

v. The Workforce Units will be made available on a continuous basis to all Households that meet the foregoing Tenant Qualifications on a first come, first served basis. The Workforce Units shall be the same construction and appearance (e.g., type and brand of appliances, materials used for countertops, flooring, etc.) to the "Market Rate Units," shall not be in isolated areas in the Project and shall be interspersed among the Market Rate Units to the extent possible.

vi. The property owner (or its property management company) shall deliver calendar quarterly monitoring and compliance reports to the Issuer during the period. Such reports shall include a Compliance Certificate, Rent Roll and Resident Income Certification (collectively, the "Compliance Forms"). The Compliance Forms shall be delivered to the City of Powder Springs no later than twenty (20) days from the end of each calendar quarter.

vii. Qualified Tenants occupying the workforce credit units must reapply to meet the Tenant Qualifications on an annual basis. Should a Tenant who previously qualified and is inhabiting a workforce credit unit not qualify upon renewal, such Tenant shall have the right to either 1) Execute a market rent lease at lease renewal for the inhabited unit or an alternate market rate vacant unit within the development or 2) Vacate the inhabited workforce credit unit within three (3) months, while still paying the monthly discounted rent over the three (3) month period.

Sec. 4-330. Wrecked Motor Vehicle Compound.

Wrecked motor vehicle compounds shall meet the following requirements:

(a) **Equipment and parts.** All equipment and vehicle parts shall be stored within a fully enclosed building or structure.

(b) **Vehicle storage.** Vehicles shall be stored in a fully screened and fenced area on the lot.

Sec. 4-335. Yard or Garage Sale.

Yard or garage sales are subject to the following requirements:

(a) No yard sale shall not exceed more than a three-day (72 consecutive hour) period.

(b) No street address may obtain a permit more than four times each calendar year.

(c) The yard sale organizer shall deliver to the community development department at the time of the permit issuance a deposit in the amount of twenty-five dollars ($25.00) in cash. This deposit shall be refunded to the applicant once the applicant has shown that all signs used to advertise the yard sale have been removed in accordance with this section.

(d) It shall be the responsibility of the property owner to remove the signs within 24 hours after the expiration of the permit.

[Secs. 4-340 to 4-400 Reserved].

Division II-A. Towers and Wireless Telecommunications Facilities.

Sec. 4-405. Purposes and Intentions.

The purpose of this article is to establish guidelines for the siting of all wireless telecommunication equipment and facilities, microwave towers, common carrier towers, cellular, television and radio telecommunications towers and antennae. The regulations and requirements of this article are adopted for the following purposes:

(a) To provide for the location of communication towers and communication antennas; and to protect residential areas and land uses from potentially adverse impacts of communication towers, monopoles, and antennas by restricting them in accordance with this article.

(b) To minimize adverse visual impacts of communication towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques.

(c) To accommodate the growing need for communication towers and antennas while minimizing the total number of towers within the community necessary to provide adequate personal wireless services to residents.

(d) To promote and encourage shared use/co-location of existing and new communication towers (i.e., the use of multiple antennae operated by different providers on a single tower) as a primary option rather than construction of additional single-user towers or monopoles.

(e) To promote and encourage placement of antennae on existing towers and on building and other structures where such siting options exist.

(f) To consider public health, safety, and welfare in the siting of new towers, and to avoid potential damage to adjacent properties from tower or monopole failure through engineering and careful siting of tower structures.

(g) To limit the siting of telecommunications facilities and towers where they will have the least adverse impact on the community and still comply with the requirements of the Telecommunications Act of 1996 (Public Law No. 104-104, 47 U.S.C. Section 332(c)(7)). These intentions are accomplished with restriction of locations and by enacting controls on height, setbacks, screening, color, and materials in order to minimize visibility and promote public safety and welfare. The regulations in this division are reasonably related to the valid public purposes described in this Section.

(h) It is not the intent of the Mayor and Council to discriminate among providers of functionally equivalent services or to prohibit or have the effect of prohibiting the provision of wireless services in the city. It is also the intent of the city that applications to place, construct, or modify personal wireless service facilities will be acted upon within a reasonable time.

Sec. 4-410. Applicability and Exemptions.

All new communication towers, monopoles, and communication antennas shall be subject to this division, except that this division shall not govern the following:

(a) Any tower, or the installation of any antenna, that is 70 feet or less in height and is owned and operated by a federally-licensed amateur radio station operator or ham radio operator from the ham radio operator's residence.

(b) Antennae or towers located on property owned, leased, or otherwise controlled by the City of Powder Springs, Cobb County, or Cobb County Board of Education, provided that a license or lease authorizing such antenna or tower has been approved by the government or agency with jurisdiction.

(c) Monopole towers 100 feet or less in height located within electrical substations and antennae attached to existing transmission towers.

Sec. 4-415. Performance and Construction Standards.

(a) Structural Design. New communication towers or monopoles and antennae, and modifications to existing structures including, without limitation, the addition of height, antennae or service providers, shall be constructed in accordance with applicable federal, state and local regulations.

(b) Placement Restrictions. Towers occupying a lot as a principal use shall at minimum meet the minimum lot size and setback requirements for the zoning district in which the lot is located. Towers shall be a minimum of 300 feet from any residential zoning district. All towers shall be located at least one-half of their height in feet from any public right-of-way. When the tower is on leased property, the setbacks shall apply to the lot of record, not the lease boundaries.

(c) Screening. The visual impacts of a communication tower at the ground level shall be mitigated by landscaping. All towers and accessory structures shall be surrounded on the ground by a minimum ten foot wide landscape strip or buffer that forms a hardy screen dense enough to interrupt vision and shield the base and accessory structures from public view and view from the surrounding properties. The buffer shall consist of evergreens that will reach a minimum height of at least eight feet within three years.

(d) Fencing. A wall, or a black vinyl-coated chain link fence, with a minimum height of six feet from finished grade, shall be provided around each communication tower or monopole. Access to the tower or monopole shall be through a locked gate. The tower or monopole shall be equipped with an appropriate anti-climbing device, unless the community development director waives this requirement for alternative tower structures.

(e) Height. Through approval of a special use application, the height of the tower may exceed the maximum height limit of the zoning district in which it is located, up to a

height of two hundred feet, subject to the limitations of this paragraph. Towers shall be the minimum height necessary to provide parity with existing similar tower-supported antenna. No tower, pole, or antenna, whether freestanding or attached to a building or structure, shall exceed two-hundred feet in height from ground level unless approval is obtained via special use permit. To prevail in any special use application to exceed established maximum height limitations of this paragraph, the applicant must successfully demonstrate why the prescribed maximum height is insufficient to provide adequate service, or that a taller tower will be in the community's interest by avoiding the construction of one or more additional towers at a new location.

(f) Illumination. Communication towers, monopoles, or antennae shall not be lighted except to assure human safety or as required by the Federal Aviation Administration (FAA), Federal Communications Commission, or other federal agency with jurisdiction. Lighting shall be restricted to dual lighting, medium intensity white strobe lights (daylight mode), and red obstruction lights (nighttime mode), unless the FAA or state aeronautics division requires another type of lighting.

(g) Color and Material. Towers clustered at the same site shall be of similar height and design. Communication towers not required to be painted or marked by the Federal Aviation Administration shall have either galvanized steel finish or be painted a non-contrasting color approved by the Mayor and Council to minimize the equipment's visibility. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical or closely compatible with the color of the supporting structure to render the antenna and related equipment as visually unobtrusive as possible. During the review process, the Mayor and Council may require the camouflaging of towers where appropriate and feasible.

(h) Signs and advertising. No advertising is permitted on a tower or antenna. However, towers shall have mounted in a conspicuous place a sign of not more than one square foot in area, identifying the facility's owner and providing a means of contact in the event of an emergency.

(i) Co-location. Owners of proposed communication antennas may and are encouraged to co-locate on existing communication towers. New or additional special use approval is not required for the addition of an antenna to an existing approved tower or monopole. All towers over 100 feet in height shall have structural capacity and ground or interior space to accommodate multiple users as follows: towers up 160 feet shall accommodate at least three users, and towers taller than 160 feet shall accommodate at least five users.

(j) Noninterference. No communication tower or antenna shall interfere with public safety communication. Frequency coordination is required to ensure noninterference with public safety system and/or public safety entities.

Sec. 4-420. Application Requirements.

Each application for a use pursuant to this division shall include the following information, which is in addition to the information required for special use applications generally, if required:

(a) A recorded plat or boundary survey.

(b) A site plan, with topographical information.

(c) An elevation view, perspective drawing, or simulated photograph of how the proposed telecommunication tower will appear from public rights-of-way and surrounding residential streets from which the tower will be visible once constructed.

(d) Supporting engineering calculations and information which provide evidence of need and document radio frequency range, coverage area, and tower height requirements. The application must specifically address whether there is a technically suitable space available on an existing tower or other location within the search area (i.e., the grid for the placement of the antenna), and such information shall specifically include the location of all existing towers within a one-mile radius of the site proposed.

(e) The community development director may require certification as to structural integrity of any telecommunications tower, monopole or antenna array.

(f) The community development director shall be authorized to charge a fee to the applicant in an amount designed to allow the city to retain the services of one or more consultants, engineers, or other experts in the area of radio frequency engineering or other relevant fields to assist the city in analyzing the application and providing an independent assessment of the information submitted as a part of the application.

Sec. 4-425. Application Processing.

Decisions on applications for wireless service facilities shall be made within a reasonable period of time, which shall mean generally that such decisions shall be processed in roughly the same amount of time required for other special use applications; provided, however, that the Mayor and Council shall table an application for special use for a wireless service facility no more than once before making a decision, unless the applicant does not object to additional continuances.

Sec. 4-430. Criteria to Consider in Acting upon Applications.

In addition to the criteria for determining whether to approve or deny special uses, as specified in this development code, when an application for wireless telecommunication facilities or equipment is considered, the Mayor and Council in the case of a special use permit shall consider the following criteria without limitation:

(a) Impacts on surrounding properties with regard to aesthetics and fit with the context of its surroundings, considering the location, height, type of facility, color and materials proposed.

(b) Whether impacts on surrounding properties on aesthetics can be mitigated by alternative designs, such as making the tower resemble common features such as church steeples, bell towers, clock towers, grain silos, gateway elements, and monuments, or by requiring greater setback from impacted properties.

(c) Whether the tower or wireless facility would pose an unreasonable risk to adjoining properties, including consideration of a fall area where ice or other debris may fall off the tower without harm.

(d) The appropriateness of the location of existing towers, monopoles, and buildings, or other structures including electric transmission towers, that might serve as alternative locations to construction of a new tower or monopole or placement on a building in a new location. It is the intent that, where possible, new antennae shall be co-located on existing towers and monopoles, placed on existing buildings, or be within a concealed support structure (e.g., camouflaged as a, church steeple, clock tower, grain silo, flagpole, etc.), prior to authorizing the installation of a new non-camouflaged pole or tower. The failure to consider or unwillingness to accept viable options as described in this paragraph may be grounds for denial of a special use application for a new tower or monopole.

(e) Whether the application demonstrates compliance with the regulations established in this division.

(f) Whether the tower would be engineered and constructed to accommodate additional communication service providers (i.e., whether the application provides for co-location as required by this division).

(g) Whether a denial of the application would have the effect of prohibiting wireless services in the jurisdiction or area or would unduly restrict competition among wireless providers.

In addition, Mayor and Council shall make a decision on the application based on substantial evidence to allow a reviewing court to understand the reasoning behind the decision and whether that reasoning is consistent with the evidence presented. To this end, for each application for wireless service facilities, Mayor and Council shall rely on findings of fact in making a decision on said application. Such findings may be part of the recommendation and report of the community development director, the application and supporting materials submitted by the applicant, testimony from interested individuals, professionals, and the applicant, and any additional findings of fact the Mayor and Council may itself determine. Generalized community concerns, unaccompanied by supporting documentation, do not constitute substantial evidence under Section 704 of the Telecommunication Act of 1996 or this division.

Sec. 4-435. Amateur Radio, Citizen's Band Radio and Other Receive-only Radio Antennae.

a) Amateur radio, Citizen's Band radio and other receive-only radio antennae may be installed on masts or towers anywhere within the buildable lot area, except in residential and mixed use zoning districts.

b) In residential and mixed-use zoning districts, masts or free-standing towers shall be located in the side or rear yard but not within the minimum side or rear yard setback for principal buildings.

c) The maximum height for masts or free-standing towers regulated by this section is 35 feet above ground level.

Division II-B. Small Cell Wireless Facilities and Aesthetic Standards.

Sec. 4-440. Authority.

O.C.G.A. § 32-4-92(a)(10) authorizes the City of Powder Springs to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the "SWFAA"), addresses the placement of small wireless facilities in the public rights of way of the City.

Sec. 4-441. Findings.

The City finds it is in the best interest of the City and its residents and businesses to establish requirements, specifications reasonable conditions regarding placement of small wireless facilities, poles in the public rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

Sec. 4-442. Purpose.

The objective of this Article is to (i) implement the SWFAA and (ii) ensure use of the public rights of way is consistent with the design, appearance and other features of nearby land uses, protects the integrity of historic, cultural and scenic resources and does not harm residents' quality of life.

Sec. 4-443. Definitions.

As used in this Article, the following terms have the following meanings:

"Antenna" means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or

other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

"Applicable Codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the State of Georgia or the City or are otherwise applicable in the City.

"Applicant" means any person that submits an application.

"Application" means a written request submitted by an applicant to the City for a permit to: (i) collocate a small wireless facility in a right of way; or (ii) install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be located.

"Authority Pole" means a pole owned, managed, or operated by or on behalf of the City. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.

"Collocate" or "Collocation" means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

"Communications Facility" means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

"Communications Service Provider" means a provider of communications services.

"Communications Services" means cable service as defined in 47 U.S.C. § 522(6); telecommunications service as defined in 47 U.S.C. § 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.

"Consolidated Application" means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.

"Decorative Pole" means an authority pole that is specially designed and placed for aesthetic purposes.

"Electric Supplier" means any electric light and power company subject to regulation by the Georgia Public Service Commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.

"Eligible Facilities Request" means an eligible facilities request as set forth in 47 C.F.R. § 1.40001(b)(3), as it existed on January 1, 2019.

"FCC" means the Federal Communications Commission of the United States.

"Fee" means a one-time, nonrecurring charge based on time and expense.

"Historic District" means: (i) any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1; (ii) any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the Georgia Historic Preservation Act'; or (iii) any area designated as a historic district or property by law prior to April 26, 2019.

"Law" means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.

"Micro Wireless Facility" means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.

"Permit" means a written authorization, in electronic or hard copy format, required to be issued by the City to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

"Pole" means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.

"Rate" means a recurring charge.

"Reconditioning Work" means the activities associated with substantially painting, reconditioning, improving, or repairing authority poles.

"Replace," "Replacement" or "Replacing" means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.

"Replacement Work" means the activities associated with replacing an authority pole.

"Right of Way" means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of the City and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances of buildings for public equipment and personnel used for or engaged in administration,

construction, or maintenance of public roads or research pertaining thereto or scenic easements and easements of light, air, view and access.

"Small Wireless Facility" means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

"State" means the State of Georgia.

"Support Structure" means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

" Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

"Wireless Provider" means a wireless infrastructure provider or a wireless services provider.

"Wireless Services" means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

"Wireless Services Provider" means a person that provides wireless services.

"Wireline Backhaul Facility" means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

Sec. 4-444. Authority.

In the event that any federal or state law containing definitions used in this Article is amended, the definition in the referenced section, as amended, shall control.

Sec. 4-445. Permits.

A permit is required to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

Sec. 4-446. Permit Applications.

Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall submit an application to the Community Development Department for a permit. Any material change to information contained in an application shall be submitted in writing to the Community Development Department within 30 days after the events necessitating the change.

Sec. 4-447. Permit Fees.

Each application for a permit shall include the maximum application fees permitted under O.C.G.A. § 36-66C-5(a)(1), (a)(2) and (a)(3). Such maximum application fees shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

Sec. 4-448. Application Review.

The Community Development Department shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. §§ 36-66C-7 and 36-66C-13.

Sec. 4-449. Standards for Approval.

Applications for permits shall be approved except as follows:

(a) In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which: (i) the applicant has the right to collocate subject to reasonable terms and conditions; and (ii) such collocation would not impose technical limitations or significant additional costs. The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

The Community Development Department may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j).

For applications for new poles in the public right of way in areas zoned for residential use, the City may propose an alternate location in the public right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the Community Development Department's proposed alternate location unless the location imposes technical

limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

Sec. 4-450. Effect of Permit Issuance.

A permit issued under this Article shall authorize such person to occupy the public rights of way to: (i) collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and (ii) install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).

Sec. 4-451. Annual Fees.

Upon the issuance of a permit under this Article, and on each anniversary of such issuance, every person issued a permit shall submit to the City the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities form the public rights of way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this section shall cease as of the date of the actual removal. The maximum annual payments shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

Sec. 4-452. Fees Under State Law.

Any person issued a permit shall pay the fees identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable.

Sec. 4-453. Revocation for Noncompliance.

The City may revoke a permit issued pursuant to this **Error! Reference source not found.**if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provision of this Article or the Georgia Streamlining Wireless Facilities and Antennas Act. Upon revocation, the City may proceed as provided in this Article.

Sec. 4-454. City Remedies for Unpermitted Activity.

If a wireless provider occupies the public rights of way without obtaining a permit required by this Article or without complying with the SWFAA, then the City may, at its the sole discretion, restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the City in doing so, plus a penalty not to exceed $1,000.00. The City may suspend the ability of the wireless provider to receive any new

permits from the City under this Article**Error! Reference source not found.** until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

Sec. 4-455. Public Inspection.

All accepted applications for permits shall be publicly available subject to the limitations identified in O.C.G.A. § 36-66C-6(c).

Sec. 4-456. Consolidated Applications.
Section 16-176. An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.

Sec. 4-457. Permit Timeframe.

Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2).

Sec. 4-458. Permit Duration.
Issuance of a permit authorizes the applicant to: (i) undertake the collocation, installation, modification or replacement approved by the permit and (ii) operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of 10 years.

Sec. 4-459. Permit Renewal.

Permits shall be renewed following the expiration of the term identified in Section 4-458 upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B).

Sec. 4-460. Collocation.

If an application for a permit seeks to collocate small wireless facilities on authority poles in the public rights of way, then the City shall, within 60-days of receipt of the completed application: (i) provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the proposed facility; or (ii) notify the wireless provider that the wireless provider will be required to perform the make-ready work. Any make-ready work performed by the City shall be completed pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(n).

Sec. 4-461. Procedures for Removal.

A person may remove its small wireless facilities from the public rights of according to the procedures of O.C.G.A. § 36-66C-5(e).

Sec. 4-462. Requirement of Restoration.

In the event of a removal hereunder, the right of way shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If a person fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the removal within 90 days of the removal, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the person the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed $500.00. The City may suspend the ability of the person to receive any new permits under this Article unless the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City will not suspend such ability of any person that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

Sec. 4-463. Removal to Meet City Needs.

If, in the reasonable exercise of police powers, the City determines: (i) a pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway, or (ii) relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless within the time period prescribed in O.C.G.A. § 36-66C-7(l), the City make take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.

Sec. 4-464. Reconditioning and Replacement.

The City shall recondition and replace authority poles consistent with the provisions of O.C.G.A. § 36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).

Sec. 4-465. Abandonment.

A wireless provider must notify the City of its decision to abandon any small wireless facility, support structure or pole pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-7(p) regarding abandonment. The City may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

Sec. 4-466. Location Standards.

Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use: (i) upon a receipt of a permit under this Article (ii) subject to applicable codes; and (iii) so long as such

small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. § 36-66C-7(h).

(a) New, modified, or replacement poles installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.

(b) Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:

(i) Fifty feet above ground level; or

(ii) Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole;

(c) New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.

(d) New small wireless facilities in the public right of way collocated on a new or replacement pole under 5(a) or 5(b) may not extend above the top of such poles.

Sec. 4-467. Decorative Poles.

A decorative pole should only be located where an existing pole can be removed and replaced, or at a new location where the City has identified that a streetlight is necessary.

Sec. 4-468. Concealment.

Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

(a) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;

Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.

Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.

Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.

Sec. 4-469. Collocation in Historic Districts.

Notwithstanding any provision of this Article to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following: (i) issuance of a permit under this Article and (ii) in compliance with applicable codes.

Sec. 4-470. Collocation on Decorative Poles.

Notwithstanding any provision of this Article to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following: (i) issuance of a permit under this Article and (ii) compliance with applicable codes.

Sec. 4-471. Aesthetic Standards.

(a) O.C.G.A. § 32-4-92(a)(10) authorizes the City to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way.

(b) The City finds it is in the best interest of the City and its residents and businesses to establish aesthetic requirements and other specifications and reasonable conditions regarding placement of facilities in the public rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

(c) The objective of this Section is to ensure use of the public rights of way: (i) is consistent with the design, appearance and other features of nearby land uses; (ii) protects the integrity of historic, cultural and scenic resources; and (iii) does not harm residents' quality of life.

(d) This Section applies to all requests to locate facilities in the public rights of way and ongoing use of the public rights of way for such facilities. This Section is established pursuant to the City Charter and applicable law. This Section is administered by the Community Development Department.

(e) Placement or modification of facilities in the public right of way shall comply with this Section at the time the permit for installation or modification is approved and as amended

from time to time. Permittees are required to comply with the City Code and applicable law and regulations.

(f) Unless otherwise defined, terms used in this Section shall have the meanings given them in O.C.G.A. § 36-66C-2. Definitions in this Section include references and citations to applicable federal and state laws. In the event that any referenced section is amended, the definition in the referenced section, as amended, shall control.

(g) Facilities must be compatible in size, mass, and color to similar facilities in the same zoning area, with a goal of minimizing the physical and visual impact on the area.

(h) Facilities in residential and historic districts or properties areas shall be visually and architecturally integrated with the residential and historic districts and properties and shall not interfere with prominent vistas or significant public view corridors.

(i) Facilities must be located in alignment with existing trees and/or facilities.

(j) Facilities must maintain the integrity and character of the neighborhoods and corridors in which the facilities are located.

(k) Except as provided in paragraphs (1) and (2) of this Subsection, facilities shall be installed underground in residential districts so long as placement underground will not materially impact the provision of service. Any individual requesting to locate facilities above ground in residential districts has the burden to demonstrate by clear and convincing evidence that undergrounding will effectively prohibit the provision of the service in question.

(1) Light poles and small wireless facilities collocated thereon may be located above ground in areas of the City where facilities are primarily located underground.

(2) The City may: (i) allow collocated small wireless facilities placed aboveground prior to the effective date of this division and subject to any applicable pole attachment agreement to remain above ground; or (ii) allow the wireless provider to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

(l) Facilities installed in the historic district of the City shall conform to the provisions of the Community Enhancement Master Plan and Unified Development Code and the provisions of this Section.

(1) Subject to compliance with the other regulations set forth by City Ordinance, State or Federal law, including location, siting and design standards and requirements and the issuance of a small wireless permit facility right of way placement permit pursuant to O.C.G.A. § 36-66C-1 et. seq. (and as amended from time to time) only the following types of facilities may be placed in the public right of way located in the City Historic District:

(A) Concealed attached small wireless facility mounted to one of the following types of alternative support structures:

(i) Utility pole or replacement utility pole (i.e., utility pole-mounted small wireless facility);

(ii) Street light pole (i.e., streetlight-mounted small wireless facility);

(iii) Traffic signal pole.

(B) Concealed freestanding support structures designed as a:

(i) Street light fixture, such as a street light standard or pole, pedestrian light, decorative street light, or decorative post-top luminaire (lamppost) which is primarily used for public lighting (i.e., faux streetlight facility); or

(ii) Concealed Unipole.

(2) Siting Standards and Requirements for small wireless facilities in the City Historic District. In order to limit the proliferation of new support structures in the public right-of-way in the Historic District and so as to preserve the appearance of the public right-of-way and prevent physical or visual obstructions to pedestrian or vehicular traffic, inconveniences to public use of the right-of-way in the Historic District, safety hazards to pedestrians and/or motorists, and new visual and aesthetic impacts, a proposed small wireless facility in the City Historic District shall be sited in the public right-of-way in accordance with the siting alternatives order set forth below. In order to demonstrate that a siting is impracticable or technically infeasible, the applicant shall provide an evidence of need report to the City at its pre-application meeting or as part of the application showing why and how complying with the foregoing standard would be impractical or technically infeasible:

(A) Utility-Pole-Mounted small wireless facility. A new small wireless facility in the public rights-of-way in the City Historic District must be placed on utility poles or replacement utility poles (subject to and in accordance with the standards and regulations governing concealed utility-pole-mounted small wireless facilities and other requirements set forth herein), unless such siting is impracticable or technically infeasible as sufficiently demonstrated by an evidence of need report;

(B) Concealed Streetlight-Mounted Small Wireless Facility. When an applicant sufficiently demonstrates that there are no existing utility poles in the subject area

of the public right-of-way to accommodate the proposed small wireless facility, the proposed small wireless facility shall be placed on an existing street light (subject to and in accordance with the standards and regulations governing concealed street-light-mounted small wireless facility and other requirements set forth herein), unless such siting is impracticable or technically infeasible as sufficiently demonstrated by an evidence of need report;

(C) Concealed Attached Small Wireless Facility Mounted to Traffic Signal Pole. When an applicant sufficiently demonstrates that there are no existing utility poles and street lights in the subject area of the public right-of-way to accommodate the proposed small wireless facility, the proposed small wireless facility may be placed on an existing traffic signal pole (subject to and in accordance with the standards and regulations governing concealed street-light-mounted small wireless facilities and other requirements set forth herein), unless such siting is impracticable or technically infeasible as sufficiently demonstrated by an evidence of need report; or

(D) New Concealed Freestanding Support Structures: Faux Streetlight Facility or Concealed Unipole. When a registrant sufficiently demonstrates that there are no existing utility poles, street lights or traffic signal poles in the subject area of the public right-of-way to accommodate the proposed small wireless facility, a faux streetlight facility or concealed unipole may be sited in the public right-of-way in the Historic District (subject to and in accordance with the standards and regulations governing faux streetlight facilities and concealed unipoles and other requirements set forth herein).

(3) Small Wireless Facility Equipment allowed in the Historic District. Only antennas, repeaters, radio units, equipment cabinets or pedestals, and other accessory equipment associated with small wireless facilities, which are physically much smaller and less visible and can be placed at much lower elevations than macro-cell antennas and accessory equipment, such that they can be more easily deployed with concealment enclosures and other concealment elements that blend with the non-tower support structure on or within which they are installed, may be located within the public right-of-way in the City Historic District; provided, however, a DAS hub may not be located within the public right-of-way. The foregoing provisions are provided for the purpose of generally describing in prevailing industry terminology the type of small wireless facility equipment (in terms of its size, scale, design and feasibility for location on alternative support structures or concealed freestanding support structures) allowed in public rights-of-way in the City Historic District in accordance with the further regulations provided herein; the foregoing provisions are not intended to restrict the technology used by the registrant.

(4) Concealment Elements. In order to preserve the appearance of the public right-of-way in the Historic District and minimize the visual impact of new facilities, all small wireless facilities and small wireless facility equipment located in the public rights-of-way in the Historic District shall be designed with concealment elements, as further prescribed herein. It is the intent of this ordinance to prescribe concealment elements that are technically feasible and reasonably directed to avoid or remedy the intangible public harm of unsightly or out-of-character deployments.

(5) Additional Regulations and Design Standards for Concealed Utility-Pole-Mounted Small Wireless Facilities.

(A) Location Standards. Utility-pole-mounted small wireless facilities shall be located in areas of the public right-of-way in which there are existing utility poles. Antenna(s) and pole-mounted accessory equipment of utility-pole-mounted small wireless facilities may only be located on a utility pole currently supporting such aerial lines or a replacement utility pole.

(B) Minimum Height of Utility Pole. Antenna(s) and pole-mounted accessory equipment of a utility-pole-mounted small wireless facilities may only be attached to a utility pole with a height of twenty-five (25) feet or greater, as measured from finished grade.

(C) Minimum Height Location of Antennas. Antenna(s) shall be mounted on the utility pole at a height of fifteen (15) feet or more above grade. Pole-mounted equipment cabinets/enclosures shall be mounted on the utility pole at a height of ten (10) feet or more above grade.

(D) Design Standards and Concealment Elements.

(i) General Concealment Measures. The size, shape and orientation of antenna(s) and accessory equipment mounted to a utility pole shall be consistent with the size, shape and orientation of existing utility equipment installed on the subject utility pole and other utility poles in the nearby area (within 500 linear feet of the subject utility pole and on the same side of the right-of-way). Such antenna(s) and accessory equipment shall be painted, textured, and designed in a manner consistent with the utility pole's style, color, texture and materials and otherwise camouflaged and designed to blend in with the existing utility pole such that the utility-pole-mounted small wireless facility is no more readily apparent or plainly visible from public rights-of-way than the existing utility equipment located on the utility pole.

(ii) Type of Antennas; Maximum Number. No type of antenna other than a panel or whip antenna may be mounted to a utility pole unless such antenna is enclosed within a canister, radome, shroud or other similar concealment enclosures. No more than (a) four (4) side-mounted panel antennas, whip antennas, or antenna concealment enclosures, or any combination thereof, or (b) one (1) top-mounted canister, radome, shroud or similar antenna concealment enclosures with antenna(s) enclosed therein may be attached to a utility pole; provided, however, that, one (1) pole-top mounted whip antenna may be used in lieu of a side-mounted whip antenna when the other antennas or antenna concealment enclosures are side-mounted.

(iii) Mounting of Antennas. A panel antenna or canister antenna (or other antenna concealment enclosure) mounted to the side of the utility pole, together with its mount, shall not extend horizontally from the side of the utility pole more than existing utility equipment with the same orientation (located on the utility pole), or more than three (3) feet, whichever is less. No antennas mounted to the side of a utility pole shall extend vertically above the height of the utility pole, other than one (1) flush-mounted whip antenna, which may extend vertically up to three (3) feet above the height of the utility pole. Alternatively, a whip antenna may be top-mounted on the utility pole but shall not extend vertically above the height of the utility pole by more than five (5) feet, and any vertical separation between the top of the pole and the base of the whip antenna shall not be plainly visible. Canisters, radomes, shrouds or other similar antenna concealment enclosures may be mounted to the side of a utility pole but shall not extend vertically above the height of the utility pole. Additionally, one (1) canister, radome, shroud or other similar antenna concealment enclosure may be top-mounted on the utility pole (vertically mounted to the top surface of the utility pole), provided that such canister, radome, shroud or other similar antenna concealment enclosure, including its mount, is centered on the top of the utility pole, is not wider than the diameter of the top of the utility pole, and does not extend vertically above the height of the utility pole by more than three (3) feet.

(iv) Maximum Size of Antennas. A non-enclosed panel antenna shall be no larger than sixteen (16) inches in width and thirty (30) inches in length. A whip antenna shall be no larger than two-and-a-half (2.5) inches in diameter and five (5) feet in length.

(v) Maximum Antenna Volume. In addition to the foregoing size limitations, each antenna located on the utility pole shall either be (a) located within a

canister, radome, shroud or other similar antenna concealment enclosure that is no more than three (3) cubic feet in volume, or (b) if the antenna is not enclosed within an antenna concealment enclosure, capable of fitting within an enclosure (i.e., an imaginary enclosure) that is no more than three (3) cubic feet in volume. The aggregate volume of actual concealment enclosures and/or imaginary enclosures of all antennas located on the utility pole, including any pre-existing antennas, shall not exceed six (6) cubic feet in volume.

(vi) Accessory Equipment; Equipment Cabinets. All pole-mounted equipment cabinets/enclosures or, where permitted, radio units shall be flush-mounted to the utility pole. The vertical dimension of a pole-mounted equipment cabinet/enclosure (or, if permitted radio unit) shall not exceed 48 inches, and the width and depth of a pole-mounted equipment cabinet/enclosure shall not be more than twice the width (diameter) of the pole at the location of attachment. The volume of all pole-mounted equipment cabinets and accessory equipment located on the utility pole and, to the extent permitted, ground-mounted equipment cabinets and enclosures associated with wireless transmission equipment located on the utility pole, including any pre-existing wireless transmission equipment located on the utility pole, shall not exceed twenty-one (21) cubic feet.

(6) Additional Regulations and Design Standards for Concealed Streetlight-Mounted small wireless facilities.

(A) Prohibited Structures. No attached small wireless facilities may be mounted to a pedestrian light or post-top street light.

(B) Minimum Height of Streetlight Standard. Antenna(s) and pole-mounted accessory equipment of streetlight-mounted small wireless facilities may only be attached to a street light with a height of twenty (20) feet or more above grade.

(C) Minimum Height Location of Equipment Cabinets/Accessory Equipment. Pole-mounted equipment cabinets and other equipment enclosures or accessory equipment shall be mounted on the street light at a height of ten (10) feet or more above grade.

(D) Lighting, Operability and Maintenance. The streetlight-mounted small wireless facility shall not impair the existing function of the street light, including its lighting. Further, the streetlight-mounted small wireless facility must be separately metered for electric power to all wireless transmission equipment located thereon. The applicant shall be responsible for all maintenance to the

wireless transmission equipment located on the street light or otherwise installed in association therewith.

(E) Design Standards and Concealment Elements.

(i) General Concealment Measures. Antenna(s) and pole-mounted accessory equipment of streetlight-mounted small wireless facilities shall be designed, camouflaged, screened and obscured from view in order to render the attached small wireless facilities as visually inconspicuous as possible. Such antenna(s) and accessory equipment shall be painted, textured, and designed in a manner consistent with the street light's style, color, texture and materials and otherwise camouflaged and designed to blend in with the existing street light in order to render the attached small wireless facilities visually inconspicuous as possible, such that the streetlight-mounted small wireless facilities is not readily identifiable or plainly visible from public rights-of-way. Antennas shall be concealed or screened by means of canisters, radomes, shrouds or other similar concealment enclosures, which shall be flush-mounted to the top of the street light pole and painted, textured, and designed in a manner consistent with the street light pole's style, color, texture and materials and otherwise camouflaged and designed to blend in with the existing street light.

(ii) Type of Antennas. Only antenna enclosed within a canister, radome, shroud or other similar antenna concealment enclosure may be mounted to a street light. No more than one (1) antenna concealment enclosure may be attached to a street light standard.

(iii) Mounting of Antennas. Canisters, radomes, or similar antenna concealment enclosures shall be flush-mounted (without vertical separation) to the top of the pole located above the point of attachment of the mast arm or horizontally mounted luminaire but shall not extend vertically above the height of the street light by more than three (3) feet. The canister, radome or similar antenna concealment enclosure shall be designed and camouflaged to appear as an integral part of the existing pole to which it is attached. If the diameter of an antenna concealment enclosure is greater than the diameter of the top end of the pole, the antenna concealment enclosure must be tapered in a manner consistent with style of the subject pole. Antennas shall not be mounted to the mast arm of the street light.

(iv) Maximum Size of Antennas. The diameter of the canister, radome or similar antenna concealment enclosure shall not exceed the diameter of the existing pole at its mid-point.

(v) Accessory Equipment; Equipment Cabinets. Cable and conduit shall be located inside the pole and not attached to the exterior. All accessory equipment, other than antenna concealment enclosures, cables, conduit, and power meters and switches (and similar equipment installed by an electric utility), shall be located in equipment cabinets or smaller equipment enclosures. Equipment cabinets and enclosures shall be flush-mounted to the side of the street light standard. The height (length) of a pole-mounted equipment cabinet/enclosure shall not exceed 48 inches, and the width and depth of a pole-mounted equipment cabinet/enclosure shall not exceed the minimum width (diameter) of the pole at the location of attachment by more than fifty (50) percent. The volume of all pole-mounted equipment cabinets/enclosures and accessory equipment located on the street light and, to the extent permitted under state law, ground-mounted equipment cabinets/enclosures associated with the wireless transmission equipment located on the street light, including pre-existing accessory equipment located on or associated with the street light, shall not exceed seventeen (17) cubic feet.

(7) Additional Regulations and Design Standards for Concealed Attached Small Wireless Facilities Mounted to Traffic Signal Poles.

(A) General Location Standards. A small wireless facility may only be mounted on a traffic signal pole with sufficient space to accommodate the associated small wireless facility equipment, as reasonably determined and approved in writing by the Cobb County Department of Transportation (CDOT), based on the existing or planned use of the traffic signal pole, including the location of equipment used by the City (or CDOT or GDOT) for traffic control, transportation or similar public purposes. A small wireless facility shall not be mounted on a traffic signal pole when, in the reasonable opinion of the City (or, if applicable, CDOT or GDOT), it is determined that the proposed small wireless facility including its proposed location or manner of attachment, would not comply with the requirements set forth in subparagraph (b) below. Further, due to the finite amount of traffic signal poles available for attachment, applications will be denied when approval of same would effectively grant the applicant an exclusive license or right to placements on traffic signal poles within certain corridors or areas of the City.

(B) Interference with Operation and Maintenance of Traffic Signals and Other Devices. The placement of small wireless facilities on a traffic signal pole shall not obstruct, interfere with, impair or impede the use, operation or maintenance of the traffic signal pole or any equipment used by the City (or CDOT or GDOT) for traffic control, transportation or other governmental purposes, whether or not such equipment is mounted on the subject traffic signal pole, including, but not limited to,

any equipment or devices used for or as part of any intelligent transportation system (ITS), dedicated short range communications (DSRC) system, vehicle detection system, video detection system, CCTV system, or transportation management system or any elements of any transportation communications network. Small wireless facilities attached to a traffic signal pole shall not obstruct, materially interfere with or adversely affect the safe and efficient maintenance, repair or installation of any infrastructure or equipment used by the City (or CDOT or GDOT) for traffic control, transportation or other governmental purposes, or otherwise compromise safety of workers maintaining, repairing or installing such infrastructure or equipment.

(C) Other Prohibited Attachments.

(i) Decorative Poles. No small wireless facilities may be attached to a traffic signal pole with a post-top luminaire or other decorative pole (decorative traffic signal pole).

(ii) Mast Arm. No small wireless facility may be attached to the mast arm of a traffic signal pole.

(iii) Conflicting Future Use. No small wireless facility may be attached to any space on the traffic signal pole needed or required by the City (or CDOT or GDOT) for the future expansion or placement of equipment used for traffic control, traffic management, traffic monitoring, transportation or similar public purposes.

(iv) Minimum Height Location of Equipment Cabinets/Accessory Equipment. Pole-mounted equipment cabinets/shrouds or radio units shall be mounted on the traffic signal pole at a height often (10) feet or more above grade.

(v) Design Standards and Concealment Elements.

i. General Concealment Measures. Antenna(s) and pole-mounted accessory equipment shall be designed, camouflaged, screened and obscured from view in order to render the attached small wireless facility as visually inconspicuous as possible. Such antenna(s) and accessory equipment shall be painted, textured, and designed in a manner consistent with the traffic signal pole's style, color, texture and materials and otherwise camouflaged and designed to blend in with the traffic signal pole in order to render the attached small wireless facility as visually inconspicuous as possible, such that the attached small wireless facility is not readily identifiable or plainly visible from public rights-of-way. Antennas shall be concealed or screened by means of canisters, radomes, shrouds or other similar concealment

enclosures, which shall be flush-mounted to the top of the traffic signal pole and painted, textured, and designed in a manner consistent with the traffic signal pole's style, color, texture and materials and otherwise camouflaged and designed to blend in with the existing traffic signal pole.

ii. Type of Antennas. Only antenna enclosed within a canister, radome, shroud or other similar antenna concealment enclosure may be mounted to a traffic signal pole. No more than one (1) antenna concealment enclosure may be attached to a traffic signal pole.

iii. Mounting of Antennas. A canister, radome, or similar antenna concealment enclosure shall be flush-mounted (without vertical separation) to the top of the pole, but shall not extend vertically above the height of the traffic signal pole by more than three (3) feet. The canister, radome or similar antenna concealment enclosure shall be designed and camouflaged to appear as an integral part of the existing pole to which it is attached. If the diameter of an antenna concealment enclosure is greater than the diameter of the top end of the pole, the antenna concealment enclosure must be tapered in a manner consistent with style of the subject pole. Antennas shall not be mounted to the mast arm of the traffic signal pole.

iv. Maximum Size of Antennas. The diameter of the canister, radome or similar antenna concealment enclosure shall not exceed the diameter of the existing pole at its mid-point.

v. Accessory Equipment; Equipment Cabinets. Cable and conduit shall be located inside the pole and not attached to the exterior. All accessory equipment, other than antenna concealment enclosures, cables, conduit, and power meters and switches (and similar equipment installed by an electric utility), shall be located in equipment cabinets or smaller equipment enclosures. Equipment cabinets and enclosures shall be flush-mounted to the side of the traffic signal pole. The height (length) of a pole-mounted equipment cabinet/enclosure shall not exceed 48 inches, and the width and depth of a pole-mounted equipment cabinet/enclosure shall not exceed the minimum width (diameter) of the pole at the location of attachment by more than fifty (50) percent. The volume of all pole-mounted equipment cabinets/enclosures and accessory equipment located on the traffic signal pole and, to the extent permitted under this Ordinance and the Act, ground-mounted equipment cabinets/enclosures associated with the wireless transmission equipment located on the traffic signal pole,

including pre-existing accessory equipment located on or associated with the traffic signal pole, shall not exceed seventeen (17) cubic feet.

(m) Facilities must be designed using camouflaging techniques that make them as unobtrusive as possible if:

(1) It is not possible or desirable to match the design and color of facilities with the similar facilities in the same zoning area, as required under Section 9.4(a); or
(2) Existing facilities in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the City.

(n) Facilities shall incorporate specific concealment elements to minimize visual impacts.

(o) (1) Unless otherwise provided by applicable law, facilities shall, to the extent that is it reasonable, be placed in the following areas of the City: Industrial, Commercial. These areas are identified in terms of priority, meaning Industrial is the most preferred location, followed by Commercial.

(2) Facilities may be located outside areas identified in this Section if facilities must be placed outside of the areas in order to maintain existing services, improve services, or new service can only be provided if facilities are placed in areas located outside of those identified in this Section; or (ii) the proposed facilities will meet all applicable requirements for the non-preferred location and will complement the character of the zoning area.

(p) Installation of new facilities in, on, along, over, or under the public rights of way or modification of existing facilities in, on, along, over, or under the public rights of way shall:

(1) Minimize risks to public safety;
(2) Ensure that placement of facilities on existing structures is within the tolerance of those structures;

(3) Ensure that installations and modifications are subject to periodic review to minimize the intrusion on the right of way;
(4) Ensure that the City bears no risk or liability as a result of the installations or modifications; and

(5) Ensure that use of the public rights of way does not inconvenience the public, interfere with the primary uses of the public rights of way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the

right of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right of way.

(q) No facilities shall be placed in, on, along, over, or under the public rights of way unless: (i) there are immediate plans to use the proposed facility; or (ii) there is a contract with another party that has immediate plans to use the proposed facility.

(r) Every facility placed in the public rights of way shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

(s) If any subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
The City by issuing a written approval of Registration under this Chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Georgia and the City Charter, and under the provisions of the City's Codified Ordinances to regulate the use of the Rights of Way. The Utility by applying for and being issued a written Permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Utility is deemed to acknowledge that its interests are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws enacted by the City pursuant to such powers. In particular, all Utilities shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.

(t) No Person shall be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of City to enforce compliance.

[Sec.to 4-475-500 Reserved].

Division III. Adult Entertainment.

Sec. 4-505. Purposes.

This division has been enacted for the following purposes:

(a) Promoting the health and general welfare of the city.

(b) Preserving the quality of life in residential and business areas of the community.

(c) Providing clear and definite standards for the licensing of, and the operation of, adult entertainment establishments within the city.

(d) Promoting desirable living conditions and sustaining the stability of neighborhoods and property values.

(e) Preventing the use of adult entertainment establishments for unlawful purposes. It is not the purpose of this division to legislate or regulate with respect to matters of obscenity, or with respect to any other matters exclusively within the jurisdiction of the Georgia General Assembly.

Sec. 4-510. Authority.

Pursuant to its charter the City has all powers possible for a city to have under the present or future Constitution and laws of the state. Pursuant to O.C.G.A. § 36-35-3, the City is authorized to adopt reasonable ordinances, resolutions or regulations relating to all property within the city of Powder Springs, its affairs and local government. In particular, the City is authorized pursuant to O.C.G.A. § 36-60-3 to enact ordinances which shall have the effect of restricting the operation of adult bookstores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes, which is a proper exercise of the City's police powers. However, nothing in O.C.G.A. § 36-60-3 shall be construed so as to prohibit the adoption of restrictions relating to the location of adult bookstores, explicit media outlets, adult movie houses and all other forms of adult entertainment by the City Council which are more stringent than the requirements of O.C.G.A. § 36-60-3.

Sec. 4-515. Findings.

Based on the experiences of other cities and counties, including, but not limited to, Austin, Texas, and Garden Grove, California, which experiences are found to be relevant to the potential problems faced in Powder Springs, Georgia, and based on documentary evidence submitted to the city council, the city council takes note of the well-known and self-evident conditions and potentially adverse secondary effects attendant to the commercial exploitation of human sexuality, which do not vary greatly across communities within the United States of America.

The City Council also relies on evidence concerning the potentially adverse secondary effects of adult uses on the community presented in reports which were made available to the City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); and *Daytona Grand, Inc. v. City of Daytona Beach, Florida*, 490 F.3d 860 (2007), including, but not limited to, the following:

(a) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is no mechanism other than the regulations in this division to assign responsibility for the activities that occur on their premises to the owners of these establishments.

(b) Certain employees of adult entertainment establishments engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(c) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows.

(d) Offering and providing such space encourages such activities, which creates unhealthy conditions and fosters illegal activities.

(e) Persons frequent certain adult entertainment establishments for the purpose of engaging in sex within the premises of such adult entertainment establishments.

(f) Some 50 communicable diseases may be spread by activities occurring in adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), genital herpes, hepatitis B, hepatitis non-A, hepatitis non-B, amebiasis, salmonella infections and shigella infections.

(g) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to address substantial governmental concerns.

(h) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of adult entertainment establishments. Further, such a licensing procedure will place an incentive on the operators to ensure that adult entertainment establishments are operated in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment establishment, fully in possession and control of the premises and activities occurring therein.

(i) Requiring licensees of adult entertainment establishments to maintain information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behaviors by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(j) The fact that an applicant for an adult entertainment establishment license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in violation of this division.

(k) Under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in establishments offering live nude entertainment or adult entertainment (whether such alcoholic beverages are sold on the premises or not) partial or total public nudity begets criminal behavior and tends to create undesirable secondary effects. Similarly, establishments offering cinematographic or videographic adult entertainment can have identical deleterious effects on the community.

(l) Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol, live commercial nudity in general, and cinematographic or videographic adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, drug use and drug trafficking. Among the undesirable conditions identified in other communities when commercial live nudity occurs in combination with alcohol, commercial nudity in general and cinematographic or videographic adult entertainment are the depression of property values and acceleration of blight in the surrounding neighborhood. Increased allocation of law enforcement personnel to preserve law and order, and increased burdens on the judicial system as a consequence of the criminal behavior described in this subsection are also among these undesirable conditions. The City Council finds it reasonable to believe that some or all of these undesirable conditions will occur in the City as well.

(m) Other forms of adult entertainment, including, but not limited to, adult bookstores, adult novelty shops, adult video stores, peep shows, adult theaters, and massage parlors, have an adverse effect upon the quality of life in surrounding neighborhoods.

(n) The negative secondary effects of adult entertainment establishments on the City are similar whether the adult entertainment establishment features live nude dancing or sells videotapes depicting sexual activities.

(o) It is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, places of worship, schools, child day care centers and public parks to prevent or reduce the adverse impacts of adult entertainment establishments. Therefore, the City Council finds that licensing and regulations are necessary for any adult entertainment establishment. Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation. The City Council finds that the regulations in this Division promote the public welfare by furthering legitimate public and governmental interests, including, but not limited to, reducing criminal activity and protecting against or eliminating undesirable conditions, and further finds and intends that such regulations will not infringe upon the protected Constitutional rights of freedom of speech and expression.

(p) Nothing contained in this Division shall be deemed to permit or condone any activity whatsoever which is otherwise found to be obscene, lewd or illegal under applicable laws

that prohibit nudity or sexual activity. Further, the activities and uses which are regulated by this Division shall only be allowed if they are not obscene or lewd and not in violation of any other such prohibitions on nudity or sexual activity.

Sec. 4-520. Adult Entertainment Establishment Definitions.

Adult book store: Any commercial establishment having as a substantial portion of its stock in trade, books, magazines, and other periodicals that are distinguished or characterized by their emphasis on matter depicting, illustrating, describing or relating in any way to specified sexual activities or specified anatomical areas, or an establishment with more than five (5) percent of its total floor space devoted to the sale or display of such material, or an establishment with five (5) percent of its net sales derived from the sale of printed matter distinguished or characterized by an emphasis on matter which depicts, describes, or relates to specified sexual activities or specified anatomical areas.

Adult cabaret: Any establishment that features topless, bottomless or nude dancers; go-go dancers; exotic dancers; strippers; male or female impersonators; or similar entertainers.

Adult entertainer: Any person employed by an adult entertainment establishment who exposes his or her specified anatomical areas, as defined in this section. For purpose of this Division, adult entertainers shall include employees as well as independent contractors.

Adult entertainment: Those business activities distinguished or characterized by an emphasis on matter depicting, describing, involving, or relating to specified sexual activities or specified anatomical areas.

Adult entertainment establishment: Any use or building defined in this section. The term "adult entertainment establishment" shall not include legitimate, traditional or mainstream theater, which means a theater, movie theater, concert hall, museum, educational institution, or similar establishment that regularly features live or other performances or showings that are not distinguished or characterized by an emphasis on the depiction, display, or description or the featuring of specified anatomical areas or specified sexual activities in that the depiction, display or description is incidental to the primary focus of any performance. Performances and showings are regularly featured when they comprise a minimum of 80 percent of all annual performances and showings.

Adult hotel or motel: A hotel, motel or other place of temporary lodging wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, illustrating, describing or relating in any way to specified sexual activities or specified anatomical areas.

Adult mini-motion picture theater: An enclosed building or an open area used for presenting material distinguished or characterized by an emphasis on matter depicting, illustrating, describing or relating in any way to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade: Any place to which the public is permitted to be invited wherein five or more paper currency-operated, coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images distinguished or characterized by an emphasis on matter depicting, describing, illustrating, or relating in any way specified sexual activities or specified anatomical areas to five or fewer persons per machine at any one time.

Adult motion picture theater: An enclosed building or an open area used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, illustrating or relating in any way to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult video store: Any establishment having a substantial or significant portion of its stock in trade in videotapes, movies or other reproductions, whether for sale or for rent, which are distinguished or characterized by an emphasis on matter depicting, describing, illustrating or relating in any way to specified sexual activities or specified anatomical areas, or any establishment with a floor area or section comprising five percent or more of total leased space devoted to the sale or display of such material or which derives five percent or more of net sales and/or rental income from videos which are characterized or distinguished by their emphasis on matter which depicts, describes, illustrates or relates in any way to specified sexual activities or specified anatomical areas.

Bathhouse or massage parlor: Any establishment open to the public in which services offered include some form of physical contact between employee and patron and in which services offered are characterized or distinguished by an emphasis on specified sexual activities or specified anatomical areas.

Specified anatomical areas: Less than completely and opaquely covered human genitals or pubic region, cleft of the buttocks or female breast below a point immediately above the top of the areola; or human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities: Any of the following:

(a) 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 including sadomasochistic abuse, or the use of excretory functions in the context of a sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

(b) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

(c) Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast;

(d) Masochism, erotic or sexually oriented torture, beating or the inflicting of pain;

(e) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being.

(f) Human genitals in a state of sexual stimulation or arousal.

(g) Human excretion, urination, menstruation, vaginal or anal irrigation.

Sec. 4-525. General Definitions.

Good moral character: A person who within the past five years has not been convicted of, pled guilty to, or entered a plea of, nolo contendere to any felony, any crime involving dishonesty or making a false statement, any sexual offense punishable as a misdemeanor, or any offense included in the definition of a criminal offense against a victim who is a minor as defined in O.C.G.A. § 42-1-12.

Minor: Any person who is not at least 18 years old.

Obscene: Any material or performance which, after applying contemporary community standards, is found to primarily appeal to prurient interest in sex, to be as a whole, a depiction or description of sexual conduct which is patently offensive to the average person in the community and, when taken as a whole, is found to lack serious literary, artistic, political or scientific value.

Operator: The manager or other person principally in charge of an adult entertainment establishment.

Owner: Any individual or entity holding more than a 20 percent interest in an adult entertainment establishment.

Premises: The defined, closed or partitioned establishment, whether room, shop or building, wherein adult entertainment is performed, and in addition, including the grounds supporting the building or establishment, such as but not limited to places for the parking of vehicles and areas of congregation outside any building or structure.

Public place of worship: Any church, synagogue, mosque or other place of public religious worship.

Religious institution: An incorporated or unincorporated entity organized and operated for religious purposes.

School building: Any building in which instruction in subjects commonly taught in the schools and colleges in the state is rendered. This term applies to public and private school buildings.

Sec. 4-530. License Required.

(a) It shall be unlawful for any person to engage in, operate, conduct or carry on, in or upon any premises within the corporate limits of the city, any adult entertainment establishment as defined in this division without having first complied with the provisions of this division, including the obtaining of an annual license to do so, except in the event the city clerk fails to approve or deny an application for an adult entertainment establishment license within 30 calendar days as required by this division.

(b) No annual license issued hereunder shall condone or render legal any activity thereunder deemed illegal or unlawful under the laws of Cobb County, the State of Georgia or the United States or any other ordinance, rule or regulation of the City of Powder Springs.

(c) No annual license for an adult entertainment establishment shall be issued by the city when the premises to be used also holds a license to sell distilled spirits or malt beverages and wine for consumption on the premises.

(d) There shall be an annual regulatory fee for each adult entertainment establishment licensed within the city in an amount established by resolution of the city council. The annual regulatory fee must be paid to the city clerk within ten business days following approval of a complete application for an adult entertainment establishment license or a renewal thereof by the city clerk. In no event shall any adult entertainment establishment license or renewal thereof be issued until the most recent annual regulatory fee has been paid.

(e) All licenses granted hereunder shall expire on December 31 of each year.

(f) Licensees who desire to renew their license shall file an application with the city clerk on the form provided for renewal of the license for the ensuing year. The city clerk shall renew a license for an adult entertainment establishment upon payment of the required renewal fee and confirmation that all requirements of this division have been met. Renewal applications shall be submitted to the city clerk by November 15 of each year. Any licensee submitting a renewal application after November 15 shall pay, in addition to said annual regulatory fee, a late charge of 20 percent. License renewal applications received after January 1 shall be treated as an initial application, and the applicant shall be required to comply with all rules and regulations for the granting of licenses as though no previous license had been held. License applications received after January 1 shall be subject to application fees established by resolution of City Council.

(g) All licenses granted hereunder shall be for the calendar year and the full annual regulatory fee shall be paid for a license renewal application filed prior to July 1 of the licensing year. One-half of a full annual regulatory fee shall be paid for a license renewal application filed after July 1 of the license year. Any person renewing any license issued hereunder who pays the annual regulatory fee, or any portion thereof, after January 1 of the licensing year shall, in addition to said annual regulatory fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

Sec. 4-535. License Transfer, Sale or Assignment.

No adult entertainment establishment license may be sold, transferred or assigned by a licensee, or by operation of law, to any other person. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license and such license shall thereafter be null and void; provided and excepting, however, that if the licensee is a partnership and one or more of the partners may acquire, by purchase or otherwise, the interest of the deceased partner without effecting a surrender or termination of such license, and in such case, the license, upon written notification to the City, shall be placed in the name of the surviving partner.

Sec. 4-540. Application for License.

Any person or business entity desiring to obtain a license to operate, engage in, conduct or carry on any adult entertainment establishment under this Division shall make written application to the city clerk on forms prepared and approved by the City. Prior to or along with submitting such application, a nonrefundable regulatory fee of $500.00 shall be paid to the city clerk. The city clerk shall issue a receipt showing that such fee has been paid. The applicant shall also be required to pay occupational taxes in accordance with all applicable ordinances of the city at the time the application is granted or in accordance with said ordinances; provided, however, the application for or issuance of an occupational registration or the payment of occupational taxes (as separately required from the fee established in this section) does not authorize the engaging in, operation of, conduct of or carrying on of any adult entertainment establishment.

Sec. 4-545. License Application Contents.

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

(a) The full true name and any other names used by the applicant, operator and owner.

(b) The present address, phone number and email address of the applicant, operator and owner.

(c) The previous addresses of the applicant, operator and owner, if any, for a period of five years immediately prior to the date of the application, and the dates of residence at each.

(d) Acceptable written proof that the applicant, operator, and owner are at least 18 years of age.

(e) The operator's height, weight, eye and hair color, and date and place of birth.

(f) Two photographs of the operator at least two inches by two inches taken within the past six (6) months.

(g) The business, occupation, or employment history of the applicant, operator and owner for the five years immediately preceding the date of application.

(h) The nature and character of the business.

(i) The business license history of the adult entertainment establishment seeking a license and whether such establishment, in previous operations in the proposed location or any other location under license or permit, has had such license or permit for an adult entertainment business or similar type business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of revocation or suspension.

(j) Any bank accounts listed in the name of the applicant, or maintained by the applicant, whether an individual, partnership or corporation.

(k) A certified copy of the financial statement of the applicant for the twelve-month period ending 1 week prior to the filing of the application for license.

(l) Applications made on behalf of a corporation shall set forth the name of the corporation exactly as shown in the articles of incorporation or charter, together with the place and date of incorporation and the names and addresses of each current officers and directors. The corporation applying for a license shall attach a copy of the articles of incorporation and the addresses and state of incorporation of such corporation, as well as the names and addresses of the agents and employees of such corporation for a period of two years immediately prior to the filing of such application. The corporation applying for a license shall designate one of its officers to act as the responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this chapter, but only the applicable fee shall be charged.

(m) Applications made on behalf of a partnership shall set forth the name, residence address, dates of birth and percentage of ownership of each partner. Applications made on behalf of a limited liability partnership shall include a copy of the certificate of limited liability partnership filed with the clerk with jurisdiction. The provisions of the subsections pertaining to corporations, partnerships and limited liability companies shall apply when one or more of the partners is a corporation, partnership or a limited liability company. The partnership, applying for a license, regardless of form, shall designate one of the partners to act as the responsible managing partner. Such designated person shall complete and sign all application forms required of an individual applicant under this division.

(n) Applications made on behalf of a limited liability company shall set forth the name of the company exactly as shown in the articles of organization, together with the place and date of organization and the names and addresses of each of the current members and their percentage of ownership. The company applying for a license shall designate one of its members to act as the responsible managing member. The provisions of the subsections

pertaining to corporations, partnerships and limited liability companies shall apply when one or more of the members of a company is a corporation, partnership or limited liability company. Such designated person shall complete and sign all application forms required of an individual applicant under this division.

(o) If the person or business entity on whose behalf an application for a license is doing business under a trade name, the applicant shall attach a copy of the registration statement, verified by affidavit, filed with the clerk with jurisdiction. Applications filed by a person or business entity conducting business under a trade name shall include a copy of the registration statement, verified by affidavit that has been filed with the clerk with jurisdiction.

(p) With respect to the applicant, operator, owner, officers, directors, partners and members, all convictions within the past five years, including a complete description of the crime or violation, date of conviction (including a plea of guilty or nolo contendere), jurisdiction and any disposition, including any fine or sentence imposed and whether the terms of disposition have been fully completed. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the state crime information center, authorizing the release of his criminal records to the City.

(q) A complete set of fingerprints of the applicant and operator.

(r) At least 3 objective character references for the applicant, operator, owner, officers, directors, partners and members from individuals who are in no way related to the applicant, operator, owner, officers, directors, partners and members and who will not benefit financially or materially in any way by the granting of the license. The City shall prepare forms consistent with the provisions of this subsection for the applicant, who shall submit all character references on such forms.

(s) Address of the premises where the adult entertainment establishment will be operated, engaged in, conducted or carried on.

(t) A statement as to whether the premises are owned or rented and that the applicant has a right to legal possession of the premises, and copies of those documents giving such legal right. If the applicant is not the owner, The name and address of the owner and/or lessor of the real property upon which the adult entertainment establishment is to be operated, engaged in, conducted or carried on, and a copy of the lease or rental agreement.

(u) Each application for a license hereunder for which there is no existing license for operation of an adult entertainment establishment then in effect shall include a copy of a plat by a registered engineer or registered surveyor showing the proposed location (property lines) and all real properties of the type for which distance limitations are specified by this division and which fall within said distance requirements, together with the zoning district classifications and present uses of all real property within 1,000 feet of the proposed property location. After issuance of any adult entertainment establishment

license, no change in the property boundary of an adult entertainment establishment shall be made that would affect compliance with any distance requirement of this division.

(v) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath of the licensee to be true and correct as follows: by the individual if the applicant is an individual; by the president of the corporation if a corporation; by the manager or general partner if a partnership; by the managing member if a company; or by the chief administrative official if any other organization or association.

Sec. 4-550. Annual Permit Renewal Process.

Permits to operate an adult entertainment establishment shall be renewed annually. All applicants for renewal licenses shall furnish all data, information and records requested by the mayor and council or the police department. There shall be an initial and annual registration charge for the original issuance and renewal of each license issued pursuant to this division. The police chief shall have the authority to renew permits. In the event of a denial of a permit, such decision may be appealed to the mayor and council within ten business days for a hearing and final action.

Sec. 4-555. Prohibition from Interest in License.

It shall be unlawful for any elected or appointed official, employee of the City, or employee of an elected official of the City who receives all or part of his salary from the City, or his or her spouse or minor child to have any whole, partial, or beneficial interest in any license issued hereunder.

Sec. 4-560. Applicant to Appear.

The applicant shall personally appear before the city clerk and produce proof that the nonrefundable license application fee, in an amount established by resolution of the city council, has been paid and shall present the application.

Sec. 4-565. Investigation and Issuance.

The City shall within 30 calendar days from the date of actual receipt of the completed application investigate the facts provided in the application and the background of the applicant. The city clerk shall stamp the date of actual receipt on each application on the first page thereof and notify the applicant of the actual receipt of the application in writing within five business days of actual receipt of such application. The city clerk shall approve or deny any application for an adult entertainment license within 30 calendar days of actual receipt of such application. Denial of an application shall be in writing and shall state the reason for such denial. The application for an adult entertainment license shall be granted upon a finding by the city clerk that each of the following conditions is met:

(a) The required application fee has been paid;

(b) The application meets all the requirements contained in this Division;

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

(d) Neither the applicant, operator, owner, officers, directors nor members has been convicted of, pled guilty to or entered a plea of nolo contendere, to any felony, to any crime involving dishonesty or making a false statement, any sexual offense punishable as a misdemeanor or any offense included in the definition of a criminal offense against a victim who is a minor as defined in O.C.G.A. § 42-1-12 within the past 5 years;

(e) The applicant has not had an adult entertainment establishment license or other similar license or permit denied or revoked for cause by any local government jurisdiction located in or out of the state prior to actual receipt of the application;

(f) The building, structure, equipment or location of such business, as proposed by applicant, complies with all applicable ordinances and/or laws, including, but not limited to, health, zoning, distance, fire and safety requirements and standards;

(g) The applicant is at least 18 years of age;

(h) An operator will be present on the premises at all times during which the business is open on the date the business for which a license is required herein commences, and any date thereafter;

(i) The proposed location of the adult entertainment establishment complies with the location restrictions set forth in this division;

(j) The grant of such license will not cause a violation of this development code or any ordinance or regulation of the City of Powder Springs, Cobb County, the State of Georgia or the United States.

Sec. 4-570. Grounds for Denial of Issuance.

(a) No license or renewal license for operation of an adult entertainment establishment shall be issued to any person, partnership or corporation where any individual having an interest either as owner, partner, officer, or principal shareholder, directly, beneficial or absolute, shall have been convicted within ten years immediately prior to the filing of said application of any felony or misdemeanor of any state or of the United States, or any municipal or county ordinance involving a crime of moral turpitude or relating to sexual offenses or related matters, or to alcohol or drug offenses or related matters. For the purposes of this subsection, “conviction” shall mean pleas of guilty or of nolo contendere.

(b) No license shall be issued under this division if the application contains a material omission, false or misleading information, or if the application fails to indicate the true ownership of the proposed establishment.

(c) No license shall be issued under this division if the proposed premises do not comply with the Unified development code, fire code, or building code of the City.

(d) No permit shall be issued under this division where the person applying has had a permit to conduct a similar type of business denied or revoked within the past five years; provided that the mayor and council may waive this prohibition when two years have passed since the prior denial or revocation.

Sec. 4-575. Denial.

(a) A license may be denied to persons who have submitted an incomplete application or who have failed to satisfy any requirement of this division. The city clerk shall approve or deny the application within 30 calendar days of actual receipt of a complete application for an adult entertainment establishment license. In no event shall the city clerk's decision to approve or deny the adult entertainment establishment license application be withheld for more than 30 calendar days after actual receipt of the complete application. Applications held without a decision for a period of more than 30 calendar days shall be deemed approved, and the expressive conduct may begin immediately, notwithstanding the fact that no license has been issued. The city clerk shall issue an adult entertainment establishment license to an applicant who informs the city clerk of the fact that a complete application has been submitted in writing, but no decision has been made thereon for a period of more than 30 calendar days from actual receipt of a complete application. Notwithstanding the fact that the license provided by this section shall not be a prerequisite to the commencement of business operations, the city clerk shall issue an adult entertainment establishment license under such circumstances within three business days of actual receipt of written notice by the applicant of such circumstances.

(b) Written notice of denial of an application for an adult entertainment establishment license by the city clerk shall be delivered to the applicant in person or by certified mail within five business days of such denial.

(c) Any person aggrieved by any decision of the City, its officials, employees or agents pursuant to this Division may seek review of such decision by filing an appropriate pleading, including, but not limited to, a mandamus petition pursuant to O.C.G.A. §§ 9-6-20 through 9-6-28, in the superior court of Cobb County or any other court of competent jurisdiction.

Sec. 4-580. Regulation of Permitted Establishment.

(a) **Minors prohibited.** No licensee of an adult entertainment establishment shall allow any person who is a minor to frequent the establishment or to be on the premises for any reason; and no person shall sell, barter, exchange, trade, give, or offer to sell, barter, exchange, trade, or give to any minor any entertainment, service, material, device, or thing offered, for sale or otherwise, at an adult entertainment establishment.

(b) **Certain persons not to be employed.** No licensee shall employ or hire as an independent contractor in any adult entertainment establishment any person in any capacity whatsoever, including, but not limited to, performers, entertainers, or musicians, who have, within five years of the date of their employment, been convicted of any felony or misdemeanor of any state or of the United States or of a violation of any municipal or county ordinance which conviction relates to sexual offenses or related matters or to alcohol or drug offenses or related matters.

Sec. 4-585. Location Restrictions.

No adult entertainment establishment, business or use, as defined by this division shall be permitted in the following locations:

(a) Within any zoning district other than an LI, Light Industrial District or an HI, Heavy Industrial District as established in article 2 of this development code and shown on the official zoning map;

(b) Within 1,000 feet of any parcel of land that falls within any of the following zoning districts established in article 2 of this development code and the official zoning map of the City: R-15, R-20, R-30, MDR, UR and MXU;

(c) Within 1,000 feet of any parcel of land upon which a place of worship, school building, college campus, religious institution, governmental building simultaneously owned and occupied by a government, library, civic center, hospital, public park, neighborhood playground or child day care center is located;

(d) Within 1,000 feet of any parcel of land upon which an adult entertainment establishment regulated or defined in this division is located.

For purposes of this section, distance shall be measured from property line to property line along the shortest possible straight-line distance, regardless of any customary or common route or path of travel, i.e. “as the crow flies.” The term “parcel of land” means any quantity of land capable of being described by location and boundary.

Sec. 4-590. Change of Name, Premises or Location.

(a) No licensee shall advertise, 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 the license.

(b) Any application for an extension or expansion of a building or other place of business where an adult entertainment establishment is located shall require inspection and shall comply with the provisions and regulations of this division.

(c) No adult entertainment establishment shall move from the location specified on its permit unless application is made for a new license in accordance with the requirements of this division for the new location.

Sec. 4-600. On-premises Operator Required.

An adult entertainment establishment shall have a designated person to serve as an on-premises operator. The operator shall be principally in charge of the establishment and shall be located on the premises during all operating hours. The licensee shall at all times maintain a written record of the name, address and phone number of all operators with the city clerk.

Sec. 4-605. Adult Entertainment Establishment Employees.

(a) Employees of an adult entertainment establishment shall be not less than 18 years of age.

(b) An adult entertainment establishment licensee shall maintain and retain the names, addresses and ages of all employees for a period of two years.

(c) No employee shall have been convicted of any offense described in this division within the five years immediately preceding the proposed employment at or by an adult entertainment establishment. Any employee convicted of any such crimes while employed shall not thereafter work on any premises requiring licenses under this Division 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 “employment at or by an adult entertainment establishment” shall include all work done or services performed while in the scope of employment, regardless of the location at which the work is done or the services are performed. The term “convicted” shall include an adjudication of guilt, a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime in a court of competent jurisdiction.

(d) For the purposes of this section, independent contractors shall be considered as employees, regardless of the business relationship with any adult entertainment establishment licensee.

Sec. 4-610. Regulated Activities.

(a) **Hours of operation.** An adult entertainment establishment shall be closed between 2:00 a.m. and 10:00 a.m.

(b) **Display of license.** An adult entertainment establishment licensee shall conspicuously display the license required by this division.

(c) **Performance area.** All dancing by adult entertainers within an adult entertainment establishment shall occur on a platform intended for that purpose that is raised a minimum of two feet above the level of the floor adjacent to such platform.

(d) **Lighting.** All areas of an adult entertainment establishment licensed hereunder shall be fully lighted at all times patrons are present. The term "fully lighted" shall mean a minimum illumination of three and one half foot-candles per square foot throughout the premises.

(e) **Covering of windows and doors.** All adult entertainment establishments licensed hereunder shall be carried on inside a closed building with all windows and doors covered so that the activities conducted inside cannot be viewed from the immediate areas surrounding the outside of the building.

Sec. 4-615. Conduct or Activities Prohibited.

(a) **Advertising without a license.** No person shall advertise or cause to be advertised an adult entertainment establishment as defined in this division without a valid adult entertainment license issued pursuant to this division.

(b) **Employment of minors.** No adult entertainment establishment licensee shall employ or contract with as an adult entertainer any person under 18 years of age or any person who fails to meet the requirements of this division.

(c) **Admission of minors.** No person under 18 years old shall be admitted to an adult entertainment establishment.

(d) **Sales to minors.** It shall be unlawful for any person to sell, barter or give to or to offer to sell, barter or give to any minor any service, material, device or thing sold or offered for sale by an adult entertainment establishment as defined in this division.

(e) **Illegal activity.** No person, firm, corporation, partnership, association or other entity, whether licensed or unlicensed, shall conduct or suffer to be conducted any illegal activity in or upon the premises of an adult entertainment establishment.

(f) **Solicitation of money or gratuity.** No adult entertainment licensee shall allow an employee or other person to appear nude or semi-nude where there is an individual payment, offer or solicitation of money occurring between a patron and employee. No patron shall directly pay or give any gratuity to any adult entertainer. No adult entertainer shall solicit any pay or gratuity from any patron.

(g) **Artificial devices and inanimate objects.** No adult entertainment licensee shall permit any employee or patron to use artificial devices or inanimate objects to depict any of the prohibited activities described in this article, nor allow an employee or any person on the premises to insert any object into her vagina or his or her anal orifice, except for personal hygiene or out of necessity.

(h) **Simulating bestiality.** No adult entertainment licensee shall suffer or permit an employee or any person to engage in or simulate bestiality.

(i) **Simulating sexual activity.** No employee or person, while on the premises of an adult entertainment establishment, shall dance or perform nude or semi-nude in such a manner as to simulate sexual activity with any patron, spectator, employee or other person, or be permitted to do so by the licensee or its employees. In addition, no adult entertainment licensee shall allow an employee or any person on the premises to engage in actual or simulated genital masturbation or, in the case of females, fondling of the breasts.

(j) **Contact between patrons and employees.** No dancing or other performance by an adult entertainer at an adult entertainment establishment shall occur within six feet of any patron. No patron shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer, and no employee of an adult entertainment establishment shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any patron. No person, while on the premises of an adult entertainment establishment, shall, while nude or semi-nude, sit upon or straddle the leg, legs, lap or body of any patron, spectator, employee or other person therein, or engage in or simulate sexual activity while touching or being touched by a patron, spectator or other person.

(k) **Private dancing.** No licensee shall suffer or permit the use of any areas on the premises of an adult entertainment establishment for sexual contact or private dancing performance or entertainment.

(l) **Illegal drugs and gambling.** No drugs or illegal or controlled substances of any kind shall be allowed, permitted, used, possessed or sold upon the premises; and no gambling shall be allowed or permitted therein.

(m) **Alcoholic beverages.** No adult entertainment establishment licensee shall serve, sell, distribute or allow the consumption or possession of any alcoholic beverage, malt beverage, wine, distilled spirits, any mind-altering drug or controlled substance or any combination thereof on the premises of any adult entertainment establishment.

(n) **Engaging in specified sexual activities.** No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall be allowed to engage in any specified sexual activity, as defined in this Division, on the premises of any adult entertainment establishment.

(o) **Public indecency**. No adult entertainer, other employee, patron or other person at an adult entertainment establishment shall, while on the premises of an adult entertainment establishment, commit the offense of public indecency as defined by O.C.G.A. § 16-6-8.

Sec. 4-620. Special Provisions for Adult Cabarets.

The following provisions shall apply to adult cabarets in addition to all other provisions of this division:

(a) Licensees shall maintain and retain for a minimum period of two years the names, addresses, and ages of all persons employed as dancers or entertainers.

(b) All dancing and entertainment shall occur on a platform intended for that purpose which is raised at least two feet from the next highest level of the remainder of the floor.

(c) No dancing or entertainment shall occur closer than six feet from any patron.

(d) No employee shall fondle or caress any patron, and no patron shall fondle or caress any employee.

Sec. 4-625. Design of Premises.

All adult entertainment establishments shall comply with the following premises requirements:

(a) No adult entertainment establishment shall be conducted, operated or licensed in such a manner that activity occurring within the building is visible from outside the premises.

(b) No private rooms, cubicles, booths, screens, partitions or other obstructions shall be permitted within the interior of any such establishment that would prevent a clear view throughout the premises, except views to restrooms or the offices of employees of the establishment, kitchens or other areas not accessible to patrons.

(c) No premises shall have any interior connections or doors with any other place of business or with any place where gambling or other illegal activity is conducted, or where persons congregate for the consumption, sale, possession, barter, manufacture, exchange, purchase, dispensation, delivery or dealing in alcoholic beverages or illegal or controlled substances such as narcotics or marijuana.

(d) All premises shall be fully lighted, both inside and outside, except during hours when the establishment is closed. Interior lighting shall achieve a minimum of three and one half foot-candles per square foot throughout the premises.

Sec. 4-630. Conditions of Establishment.

(a) Licensed adult entertainment establishment 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 operator. Adequate facilities, equipment and supplies shall be provided on the licensed premises to meet this requirement and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises, but shall be disposed of daily or as often as collections permit.

(b) The Powder Springs police department and/or code enforcement officer shall have the authority to periodically inspect adult entertainment establishments to determine compliance with and enforce all provisions of this division and other applicable ordinances, regulations and laws.

Sec. 4-635. Unlawful Operation Declared Nuisance.

Any adult entertainment establishment operated, conducted or maintained contrary to the provisions of this division shall be, and such establishments are hereby declared to be, unlawful and a public nuisance. The City may, in addition to or in lieu of prosecuting a criminal action hereunder, commence any action, proceeding for abatement, removal or enjoinment thereof in a manner provided by law. The City may also take such other steps, and shall apply to such court 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, engaging in, conducting or carrying on an adult entertainment establishment contrary to the provisions of this division.

Sec. 4-640. Employee Permits.

(a) **Employee permit required.** Any individual employed or hired as an independent contractor in any establishment offering adult entertainment shall first obtain a permit from the Powder Springs police chief.

(b) **Application for employee permits.** Application for a permit as required herein shall be addressed to the Powder Springs police chief. The applicant shall furnish the following information: name and address of the applicant; name and address of any person having previously employed or utilized the applicant as an independent contractor for a period of six months or longer during the preceding five years; and a record of any convictions for violations of federal or state laws or municipal or county ordinances. Each applicant shall pay an amount specified by the council for certification of eligibility. Such payment is to accompany the application for a permit.

(c) **Fingerprinting Required.** Employees and independent contractors must be fingerprinted by the Powder Springs police department.

(d) **Minimum Age of Employees.** No licensee hereunder shall employ or hire as an independent contractor any person unless such person is 21 years of age or older.

Sec. 4-645. Grounds for Denial of Employee or Independent Contractor Permit.

(a) No person shall be issued any employee or independent contractor permit who has, within 5 years of the date of proposed employment or contract agreement, been convicted of any felony, misdemeanor or ordinance violation involving sex-related, alcohol-related, or drug-related offenses.

(b) The Powder Springs police chief shall have the authority to revoke an employee or independent contractor permit for violation of the provisions of this division, or for any occurrence that would have barred issuance of the original permit.

(c) The permit holder shall have the right to appeal the revocation to the mayor and council within ten calendar days after written notice of revocation by the Powder Springs police chief or his designee.

(d) Independent contractors working or acting as performers, entertainers, musicians, dancers, waiters, waitresses, masseurs or masseuses shall be considered employees for the purposes of this division; and all requirements hereof applicable to employees shall apply to such independent contractors.

Sec. 4-650. Existing Establishments.

All adult entertainment establishments lawfully existing on the effective date of this division shall obtain a license and comply with the terms of this division within 60 calendar days of the effective date of this division.

Sec. 4-655. Suspension or Revocation of License.

Any of the following actions shall be grounds for suspension or revocation of a license issued pursuant to this division:

(a) Making of any statement on an application for a license issued hereunder which is material and is later found to be false;

(b) Violation of any of the regulations or prohibitions of this division; or

(c) Conviction or a plea of guilty or nolo contendere of the applicant, operator or owner of any of the crimes which would make a licensee of an adult entertainment establishment ineligible to hold a license under the requirements of this division.

(d) Any license issued hereunder shall be subject to suspension or revocation for violation of any of the prohibitions contained in this division or any ordinance related to operation of the business or for any occurrence that would have barred issuance of the original permit.

Sec. 4-660. Procedure for Suspension or Revocation.

(a) Upon a finding by the police department that reasonable grounds exist to suspend or revoke a license issued hereunder, the city clerk shall schedule a hearing before mayor and council for the purpose of considering such suspension or revocation.

(b) Notification to the licensee shall specify the time and date of the hearing, the proposed action and the grounds therefore and shall be served upon the licensee a minimum of 21 calendar days prior to the hearing.

(c) The licensee shall be entitled to present evidence and cross-examine any witnesses at the hearing, with or without legal counsel.

(d) After hearing the evidence presented by police department and the licensee, mayor and council may suspend or revoke the license upon a finding of the grounds for suspension or revocation as set forth above. The mayor and council shall render a decision within ten calendar days of the hearing and shall notify the licensee in writing within five business days of the decision.

(e) Appeals from the decision of the city council pursuant to this section hall be as provided by law.

Sec. 4-665. Automatic License Forfeiture for Non-use.

Any adult entertainment establishment license holder who shall for a period of three consecutive months following issuance of the license cease to operate the business and sale of the products authorized shall, after the said three-month period, automatically forfeit the license without the necessity of any further action by the City of Powder Springs.

[Secs. 4-670 – 4-700 Reserved].