AGENDA

Gainesville Mayor/Council Meeting
Tuesday, August 15, 2017, 5:30 PM
Public Safety Complex (Gainesville Justice Center)
Municipal Court Room, 701 Queen City Parkway
Mayor or Mayor Pro Tem Presides

INVOCATION:

PLEDGE OF ALLEGIANCE:

PRESENTATION(S):

A. Presentation of House Resolution 25 - Officer Henry Tilman Davis Memorial Intersection

B. 2017 Georgia Chapter American Public Works Association – Facility and Grounds Manager of the Year Award

C. Alta Vista Columbarium Garden Award

COUNCIL ANNOUNCEMENTS:

PUBLIC COMMENTS: (20 minutes maximum)

CONSENT AGENDA:

Appointments

A. Chattahoochee Golf Course Advisory Committee
- Position held by Joe Turner
- Position held by A.J. Kiker (reappointment)
- Position held by Joe Kolesar
- Position held by Ed Pledger

B. Gainesville-Hall '96 Board
- Position held by Catiel Felts

C. Main Street Gainesville Advisory Committee
- Position held by Amanda Kroll McClure (reappointment)
- Position held by Brett Fowler (reappointment)
- Position held by Thea Dubose

D. Metropolitan Planning Organization Citizens Advisory Committee
- Position held by Jerry Castleberry

Minutes

A. July 27, 2017 Work Session

Resolutions

A. BR-2017-38 Qualifying Officer for 2017 Municipal Election

B. PR-2017-23 Flat Creek Ecosystem Restoration Project Additional Funding

C. PR-2017-24 Midtown Greenway Extension, Stormwater Detention Pond and Watershed Improvement Project

GENERAL LEGISLATION:

A. **Second Reading: Ordinance No. 2017-17**
Amend Chapter 6-4 entitled Alcoholic Beverages
AN ORDINANCE TO AMEND CHAPTER 6-4 ENTITLED "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

B. **Second Reading: Ordinance No. 2017-18**
Amend Chapter 6-2 entitled Occupation Tax
AN ORDINANCE TO AMEND CHAPTER 6-2 ENTITLED "OCCUPATION TAX" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW;TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

C. **Second Reading: Ordinance No. 2017-19**
Amend Chapter 6-13 entitled Sidewalk Cafes
AN ORDINANCE TO AMEND CHAPTER 6-13 ENTITLED "SIDEWALK CAFES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

D. **Second Reading: Ordinance No. 2017-20**
Amend Section 10-1-63 entitled Alcoholic Beverage Fees and Excise Taxes
AN ORDINANCE TO AMEND SECTION 10-1-63 ENTITLED "ALCOHOLIC BEVERAGE FEES AND EXCISE TAXES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTIONS:

A. BR-2017-39 Establish Boundaries Related to Downtown Dining District

B. BR-2017-40 Establish Fees Related to Alcohol Licensing

ANNEXATION/ZONING:

A. **Second Reading: Ordinance No. 2017-21**
Annex 6.32± at 0 White Sulphur Road
AN ORDINANCE ANNEXING A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD); ADJACENT TO BUT NOT NOW WITHIN THE CORPORATE LIMITS OF THE CITY OF GAINESVILLE, GEORGIA; REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

B. **Second Reading: Ordinance No. 2017-22**
Zone 6.32± at 0 White Sulphur Road
AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA BY ESTABLISHING THE ZONING ON A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD) AT THE TIME OF ANNEXATION AS GENERAL BUSINESS, WITH CONDITIONS (G-B-c); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

C. **Second Reading: Ordinance No. 2017-23**
Rezone 0.308± acres at 523 Park Street
AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA, BY CHANGING THE ZONING ON A 0.308± ACRE TRACT LOCATED ON THE NORTH SIDE OF PARK STREET AND NORTHEAST OF THE INTERSECTION OF PARK STREET AND BOULEVARD (A/K/A 523 PARK STREET) FROM RESIDENTIAL-II (R-II) TO RESIDENTIAL-I (R-I); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

CITY MANAGER ISSUES:

CITY ATTORNEY ISSUES:

CITY CLERK ISSUES:

EXECUTIVE SESSION:

ADJOURNMENT:

Final: Friday, August 11, 2017, 4:25 PM

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/11/2017

Presenter: State Representative Lee Hawkins

Item of Business: Presentation of House Resolution 25 - Officer Henry Tilman Davis Memorial Intersection

Meeting Date: 8/15/2017

Purpose of Request:

To present the Davis family with the General Assembly of Georgia, House Resolution 25 honoring Fallen Officer Henry Tilman Davis.

State Representative Lee Hawkins will present House Resolution 25 resolving and enacting that the intersection of Beechwood Boulevard, NW and SR 53/Dawsonville Highway is dedicated to Officer Henry Tilman Davis Memorial Intersection.

History/Background:

Officer Henry Tilman Davis began his career with the Gainesville Police Department on June 28, 1969. He was killed in a motor vehicle accident in September of 1972 after his patrol vehicle was struck from behind forcing him into oncoming traffic while traveling on Dawsonville Highway.

To honor his service, the General Assembly of Georgia has enacted with House Resolution 25 that the intersection of Beechwood Boulevard, NW and SR 53/Dawsonville Highway be renamed as the Officer Henry Tilman Davis Memorial Intersection.

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

Carol Martin

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Gen Assembly of GA House Resolution 25	Presentation

House Resolution 25

A RESOLUTION

Dedicating certain portions of the state highway system; and for other purposes.

WHEREAS, the State of Georgia lost one of its finest citizens and most dedicated law enforcement officers with the tragic passing of Officer Henry Tilman Davis; and

WHEREAS, a native of Lumpkin County, Georgia, Officer Davis graduated from Lumpkin County High School and served as a guardian of this nation's freedom and liberty with the United States Army as a military policeman from August 31, 1963, to June 28, 1966; and

WHEREAS, Officer Davis began his career with the Gainesville Police Department on June 28, 1969; and

WHEREAS, his life was tragically cut short in September of 1972 after his patrol vehicle was struck from behind and forced into oncoming traffic while traveling on Dawsonville Highway in Gainesville; and

WHEREAS, he exhibited extraordinary devotion to duty, outstanding loyalty, fine leadership, and meticulous attention to detail in all his duties; and

WHEREAS, it is abundantly fitting and proper that this remarkable and distinguished Georgian be recognized appropriately by dedicating an intersection in his honor.

NOW, THEREFORE, BE IT RESOLVED AND ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA that the intersection of Beechwood Blvd., NW and SR 53/Dawsonville Highway in Hall County is dedicated as the Officer Henry Tilman Davis Memorial Intersection.

BE IT FURTHER RESOLVED that the Department of Transportation is authorized and directed to erect and maintain appropriate signs dedicating the road facilities named in this resolution.

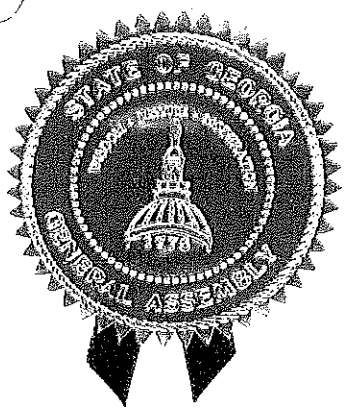
BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized and directed to make appropriate copies of this resolution available for distribution to the Department of Transportation and to the family of Officer Henry Tilman Davis.

IN HOUSE
Read and Adopted
March 03, 2017

William L. Reilly
CLERK OF THE HOUSE

IN SENATE
Read and Adopted
March 28, 2017

David A. Cook
SECRETARY OF THE SENATE



CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/10/2017

Presenter: Stan Brown - Chris Rotalsky

Item of Business: 2017 Georgia Chapter American Public Works Association – Facility and Grounds Manager of the Year Award

Meeting Date: 8/15/2017

Purpose of Request:

Todd Beebe has been named the 2017 Georgia Chapter American Public Works Association – Facility and Grounds Manager of the Year Award. The Public Works Department would like to recognize this achievement.

Presenters:
Stan Brown
Chris Rotalsky

History/Background:

Todd was nominated and awarded this honor at the Georgia Chapter APWA annual meeting. Todd was selected for his excellent work ethic and dedication to the community.

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

Chris Rotalsky

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/10/2017

Presenter: Stan Brown - Chris Rotalsky

Item of Business: Alta Vista Columbarium Garden Award

Meeting Date: 8/15/2017

Purpose of Request:

Alta Vista Columbarium Garden has been selected as the winner of the 2017 American Public Works Association Georgia Chapter for projects less than 5 million.

Presenters:
Stan Brown
Chris Rotalsky

History/Background:

In 2016 the Public Works Department started and completed a project to upgrade section L in Alta Vista Cemetery. This project included the install of a Garden and Columbarium. The addition of this Columbarium allowed the Public Works Department to provide end of life services to citizens that choose cremation instead of conventional burials. The project cost was $40,000 and spaces became available for sale in the fall of 2016. The project was submitted to the APWA awards committee. This year the Public Works department at the APWA's annual conference were honored to accept the award for structures less than 5 million dollars.

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

Chris Rotalsky

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/2/2017

Presenter:

Item of Business: Consent Agenda Items

Meeting Date: 8/15/2017

Purpose of Request:

The following appointments, minutes and/or resolutions are being considered under the Consent Agenda Section. These items were previously distributed for review and/or discussed. Unless otherwise directed by Mayor and Council, they will not be discussed during this meeting.

If you have questions regarding these documents, please feel free to contact the City Clerk's Office during normal business hours (Monday through Friday from 8:00 AM to 5:00 PM) at 770-535-6865 or via email to cityclerk@gainesville.org.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/6/2017

Presenter: Danny Dunagan

Item of Business: Chattahoochee Golf Course Advisory Committee
- Position held by Joe Turner
- Position held by A.J. Kiker (reappointment)
- Position held by Joe Kolesar
- Position held by Ed Pledger

Meeting Date: 8/15/2017

Purpose of Request:

The purpose of this request is to discuss expired terms.

History/Background:

CGCAC members follow guidelines set forth in the City Charter, Code of Ordinances and Business Resolution 2010-23. They are allowed to serve two successive three-year terms and continue to serve until a successor is appointed.

Facts & Issues for Consideration:

Department Recommendation:

The following nominations were presented during the August 10, 2017 Work Session:

- Appoint Bryson Worley to replace Joe Turner
- Appoint Jeff Lawson to replace Joe Kolesar
- Appoint Martha Shell to replace Ed Pledger
- Reapoint A.J. Kiker

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
CGCAC Members	Backup Material

CHATTAHOOCHEE GOLF COURSE ADVISORY COMMITTEE

NOMINATED BY:	LAST NAME	FIRST NAME	APPOINTED/ TERM BEGAN	REAPPOINTED	EXPIRES
CCC	Weschler	Gene	6/5/2012 UE	12/16/2014	7/1/2017
City Council	Turner	Joe	6/22/2010	3/4/2014	3/4/2017
City Council	Kiker	AJ	6/22/2010	3/4/2014	3/4/2017
City Council	Kolesar	Joe	6/22/2010	8/5/2014	8/5/2017
City Council	Pledger	Ed	6/22/2010	3/4/2014	3/4/2017
City Council	Hulsey	Mike	3/4/2014		3/4/2017
CCC	Hicks	Will	6/22/2010	12/16/2014	7/1/2017
CCC	Kelly (Chairperson)	Fred	11/1/2016		11/1/2019
CCC	Valentine	Dick	6/22/2010	12/16/2014 10/20/2015	7/1/2018
CCC	Peeples	Will	12/16/2014		7/1/2017
Ex-Officio	Thompson	Zack	1/10/2017		1/9/2018

TERM: Three year terms

CONTACT: Rodger Hogan, Golf Course

NOTES: Re-established: June 22. 2010. Original Committee began January 1, 2005
First appointees serve the initial term as shown. All successors serve 3 year terms.
Members continue to serve until a successor is appointed.
Staggered terms for December 2014 appointments.

UPDATED: 1/12/17 ag

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/6/2017

Presenter: Danny Dunagan

Item of Business: Gainesville-Hall '96 Board
- Position held by Catiel Felts

Meeting Date: 8/15/2017

Purpose of Request:

The purpose of this request is to update the membership list in regards to the Gainesville Convention & Visitors Bureau representative.

History/Background:

The Communications and Tourism Director has served as the interim representative.

Facts & Issues for Consideration:

Department Recommendation:

Regina Dyer was nominated to replace Catiel Felts during the August 10, 2017 Work Session.

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Gainesville-Hall '96 Members	Backup Material

GAINESVILLE- HALL '96

POST	ORGANIZATION	LAST NAME	FIRST NAME
	City of Gainesville	Bruner	Ruth
At Large / Chair		Collins	Mimi
Secretary	Lake Lanier CVB	Dickson	Stacey
Chamber	GHCC	Dunlap	Kit
At Large / Treasurer		Bell	Mark
At Large		Fowler	Rob
Hall County	Hall County Government	Gibbs	Scott
	City of Gainesville - CVB	Felts	Catiel
	Lanier Canoe & Kayak Club	Braff	Mike
Vice Chair	Lake Lanier Rowing Club	Sutton	Phillip
At Large		Truelove	Dixie
Ex Officio	City of Gainesville - P&R	Cooper	Melvin
Ex Officio	Hall County - Parks & Leisure	Little	Mike
Ex Officio	Lake Lanier Islands Devel. Authority	Donohue	Bill
Ex Officio	Lake Lanier Rowing Club	Millard	Robin
Advisor		Mathis	Jim
Advisor		Gilliam	Steve
At Large		O'Rouke	Tate
Ex Officio	Corp.	Bagget	Nicholas
At Large		Barnett	David
At Large		Young	Rick
Virtue of Position	Venue Manager	House	Morgan

TERM: Three-Year Terms - (members are limited to three consecutive terms)
Initial terms were staggered beginning July 2013

CONTACT: Robyn Lynch
Venue Manager, LLOV
P. O. Box 369, Gainesville 30503
770.540.6307
morgan@lakelanierolympicvenue.org

Meg Nivens
GHCC - Vision 2030
P.O. Box 374, Gainesville 30503
mnivens@ghcc.com

UPDATED: 8/2/17 dj

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/6/2017

Presenter: Danny Dunagan

Item of Business: Main Street Gainesville Advisory Committee
- Position held by Amanda Kroll McClure (reappointment)
- Position held by Brett Fowler (reappointment)
- Position held by Thea Dubose

Meeting Date: 8/15/2017

Purpose of Request:

The purpose of this request is to address terms that have expired.

History/Background:

MSGAB appointees serve two-year terms. They follow the guidelines of the City Charter and Code of Ordinances as well as Business Resolution 2010-02. Members can serve successive terms. When terms expire, members continue to serve until a successor is appointed.

Facts & Issues for Consideration:

Thea DuBose is not available to serve another term.

Department Recommendation:

The following nominations were presented during the August 10, 2017 Work Session:

- Reappoint Amanda McClure and Brett Fowler
- Appoint Carol Slaughter to replace Thea Dubose

Department Director:

Danny Dungan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type

MAIN STREET GAINESVILLE ADVISORY BOARD

POST	LAST NAME	FIRST NAME	APPOINTED	REAPPOINTED	EXPIRES
Secretary Post 1	Kroll McClure	Amanda	7/5/2011	7/16/2013 6/16/2015	6/30/2017
Vice Chairman Post 2	Fowler	Brett	7/5/2011	7/16/2013 6/16/2015	6/30/2017
Post 3	DuBose	Thea	8/4/2015		6/30/2017
Post 4	McCall	Jennifer	9/6/2016		6/30/2018
Post 5	Everett	Jason	7/16/2013	8/5/2014 7/19/2016	6/30/2018
Post 6	Kunzer	Art	2/2/2010	7/16/2013 8/5/2014 7/19/2016	6/30/2018
Post 7	Jaeger	Dale	2/1/2011 UE	7/16/2013 8/5/2014 7/19/2016	6/30/2018
Ex-Officio	Bruner	Ruth	1/10/2017		1/9/2018

TERM: 2 year terms

CONTACT: Catiel Felts, Communications and Tourism Director

NOTES: Appointments made by the Governing Body
All Directors shall assume their office/duties in July of each year (except for the initial Board).

UPDATED: 8/6/17 dj

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/6/2017

Presenter: Danny Dunagan

Item of Business: Metropolitan Planning Organization Citizens Advisory Committee
- Position held by Jerry Castleberry

Meeting Date: 8/15/2017

Purpose of Request:

The purpose of this request is to fill a vacant seat.

History/Background:

Members of the Committee serve two-year terms. They follow the guidelines of the City Charter and Code of Ordinances as well as the bylaws of the Committee.

Facts & Issues for Consideration:

Jerry Castleberry resigned from the Committee. A replacement is needed to complete the unexpired term.

Department Recommendation:

Sammy Smith was nominated to replace Jerry Castleberry during the August 10, 2017 Work Session.

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
MPOCAC Members	Backup Material

METROPOLITAN PLANNING ORGANIZATION - CITIZENS ADVISORY COMMITTEE

POST	LAST NAME	FIRST NAME	APPOINTED	REAPPOINTED	EXPIRES
Ward 1	Propes	Connie	7/5/2011	3/19/2013 8/18/2015 6/6/2017	6/30/2020
Ward 2	Stoner	Leesa	6/6/2017		6/30/2020
Ward 3	Castleberry	Jerry	8/18/2015	6/6/2017	6/30/2020
RESIGNED, per Mayor Dunagan 7/26/17					
Ward 4	Lipscomb	Berlinda	12/2/2003	4/3/2007 7/5/2011 3/19/2013 7/19/2016	6/30/2019
Ward 5	Jardine	Mary	7/5/2011	3/19/2013 7/1/2014 6/6/2017	6/30/2020

TERMS: Three year terms as of 6/6/17
Two year terms *Wards 2, 4, and 5 are 3 year terms

NOTES: Part of Gainesville-Hall MPO (GHMPO).

CONTACT: Rusty Ligon, Community Development Director
Srikanth Yamala, Hall County Planning Director

UPDATED: 6/13/17 ag

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/11/2017

Presenter: Denise Jordan

Item of Business: July 27, 2017 Work Session

Meeting Date: 8/15/2017

Purpose of Request:

The purpose of this request is to allow the governing body to approve the minutes from the referenced meeting.

History/Background:

Facts & Issues for Consideration:

Draft minutes were distributed to the governing body, City Manager, City Attorney and Department Directors for comments/corrections.

Department Recommendation:

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/10/2017

Presenter: Bryan Lackey

Item of Business: BR-2017-38 Qualifying Officer for 2017 Municipal Election

Meeting Date: 8/15/2017

Purpose of Request:

To name the Qualifying Officer for the 2017 Municipal Election.

History/Background:

Facts & Issues for Consideration:

A qualifying officer must be named to qualify candidate for the November 7, 2017 election.

Department Recommendation:

Adopt the resolution as presented.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
BR-2017-38 Qualifying Officer for 2017 Municipal Election	Resolution

RESOLUTION BR-2017-38

QUALIFYING OFFICER FOR THE 2017 MUNICIPAL ELECTION

WHEREAS, the City of Gainesville will hold its next election on November 7, 2017 to fill terms that will expire on December 31, 2017; and

WHEREAS, the qualifying period has been set for August 21, 2017 through August 23, 2017; and

WHEREAS, the Constitution of the State of Georgia, the Georgia Election Code, and the Charter and Code of Ordinances of the City of Gainesville define the requirements to hold office for the seats to be addressed.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body hereby names the City Clerk as the Municipal Superintendent, Election Superintendent and Qualifying Officer for the purpose of qualifying candidates for the 2017 Municipal Election.

BE IT FURTHER RESOLVED THAT decisions concerning the qualifying of candidates shall be determined by the City Clerk, or designee, in accordance with provisions of the Georgia Election Code, the Rules of the State Election Board, and the Charter and Code of Ordinances of the City of Gainesville.

Adopted this _____ day of _____, 2017.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/28/2017

Presenter: Horace Gee

Item of Business: PR-2017-23 Flat Creek Ecosystem Restoration Project Additional Funding

Meeting Date: 8/15/2017

Purpose of Request:

To authorize payment to Corps of Engineers to award the construction phase of the Project Partnership Agreement (PPA), which was executed/signed on September 24, 2014.

History/Background:

On September 11, 2011 the City Council approved Resolution PR-2011-32 which authorized Gainesville Public Utilities Department (now referred to as Department of Water Resources) to enter into a partnership with the Corps of Engineers for approximately 3,300 linear feet of stream restoration work. In September 2014 the PPA was once again approved by Resolution PR-2014-55, as the previous version had exceeded its contract period. In June 2017, the Corps of Engineers issued a Request for Proposals (RFP) and received proposals from six (6) firms. The lowest bid was accepted. However, as nine (9) years has elapsed since the signing of the first PPA, the total cost of the project has increased from the original estimate of $1,912,000.00 to $2,384,000.00, which has caused our 35% match to increase by $163,800.00.

Facts & Issues for Consideration:

This is a great opportunity for the City as well as the community to partner with the Corps of Engineers on a restoration project that will go long way in protecting one of the most valuable resources we have: Clean Potable Drinking Water.

Department Recommendation:

Even though our contribution has increased from the original estimate, the Department of Water Resources strongly recommends approval of this resolution. We've continued to list this project in our Capital Improvement Plan (CIP) for the last 8 years in the hopes we finally could get the funds allocated by the Federal Agencies to move forward. This is a very large project and a great opportunity to partner with a Federal Agency to greatly improve water quality within Flat Creek without our citizens having to solely fund the project.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

Amount Requested:

163,800.00

Source of Funds:

Department of Water Resources Capital Projects Fund

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
PR-2017-23 Flat Creek Ecosystem Restoration Project Additional Funding	Resolution
USACE Letter Requesting Additional Funds	Backup Material
2014 Project Partnership Agreement	Backup Material

RESOLUTION PR-2017-23

FLAT CREEK ECOSYSTEM RESTORATION PROJECT ADDITIONAL FUNDING

WHEREAS, the City of Gainesville ("the City") wishes to preserve and protect the water quality of Lake Lanier and other local bodies of water as a good steward of our water resources; and

WHEREAS, in 2008 the City updated its Watershed Management Plan and developed a Ecosystem Restoration Plan with technical overview from both the Georgia Environmental Protection Division (GA EPD) and the U. S. Army Corps of Engineers (the "Corps of Engineers"); and

WHEREAS, both the City's Watershed Management Plan and Ecosystem Restoration Plan call for restoration and retrofit of various streams in our sewer service area to restore stream habitat and lessen the effects of urban runoff to benefit water quality and control the volume of stormwater runoff; and

WHEREAS, on September 24, 2014 the City executed a Project Partnership Agreement with the Corps of Engineers which was authorized by Resolution PR-2011-32 on September 20, 2011; and

WHEREAS, the City recognizes Section 206 projects are funded 65% by the Federal Sponsor with a 35% non-federal match to be provided by the City; and

WHEREAS, the Project Partnership Agreement estimated the total cost of the project to be $1,916,000 the City therefore would be responsible for approximately $670,600; and

WHEREAS, the Project Partnership Agreement required an initial payment of $386,600 to initialize the agreement with the Corps of Engineers for this stream restoration project, with the balance of the match paid upon completion of the project; and

WHEREAS, in June 2017 the Corps of Engineers issued a request for proposals, which were received and reviewed. The proposal they have selected is the lowest bid and the Corps of Engineers is prepared to award the construction phase of the project. However, due to the elapsed time to proceed with this project, the cost has increased by $472,000.00, which requires an additional $163,000.00 from the Non-Federal partner in order to complete project.

NOW, THEREFORE, BE IT RESOLVED that the governing body for the City of Gainesville hereby authorizes additional funding in the amount of $163,000.00 from the Department of Water Resources Capital Projects Fund and/or other funding sources as required to complete this project to allow the Corps of Engineers to award the construction phase for this stream restoration project.

BE IT FURTHER RESOLVED THAT the Mayor, City Manager and City Attorney are authorized to sign documents that may be necessary to complete this project.

RESOLUTION PR-2017-23

FLAT CREEK ECOSYSTEM RESTORATION PROJECT ADDITIONAL FUNDING

Adopted this _____ day of _____, 2017.

_____
C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____
Denise O. Jordan, City Clerk

MAIL 26 JUL 17

DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0001

July 20, 2017

REPLY TO ATTENTION OF

Plan Formulation Branch
Planning and Environmental Division

Mr. Horace Gee
City of Gainesville
Environmental Services Administrator
2641 Old Flowery Branch Road
Gainesville, Georgia 30504

Dear Mr. Gee:

Reference our previous correspondence dated July 16, 2017, regarding funds needed for to construct the Flat Creek Watershed Aquatic Ecosystem Restoration Project. Based on a recent estimate, including bid amount, the total project cost is now estimated to be $2,384,000. The Project Partnership Agreement (PPA) executed between the City of Gainesville and the U.S. Army Corps of Engineer requires that funds for this project be shared at a rate of 65 percent Federal and 35 percent non-Federal. Based on that division, the Federal share is $1,549,600 and the non-Federal share is $834,400. In order to award the project for construction, additional Federal and non-Federal funds are needed. Thus far, we have received $421,600 in non-Federal cash and have approved credit for Lands, Easements, Rights-of-way, and Disposal Areas in the amount of $54,000. The balance needed to satisfy the non-Federal requirement is $358,800. In accordance with the PPA, we are requesting that you forward a check totaling $358,800 for the non-Federal match. The check should be made payable to:

FAQ, USAED, Mobile

To the following address:

U.S. Army Corps of Engineers
ATTN: PD-FP (Darnell)
Post Office Box 2288
Mobile, Alabama 36628

If you have any questions regarding this matter, please contact Mr. George Darnell at (251) 690-3240 or email at George.R.Darnell@usace.army.mil

Sincerely,

Curtis M. Flakes
Chief, Planning and Environmental Division

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF GAINESVILLE, GEORGIA
FOR
DESIGN AND CONSTRUCTION
OF THE
FLAT CREEK WATERSHED AQUATIC ECOSYSTEM RESTORATION PROJECT

THIS AGREEMENT is entered into this 30TH day of SEPTEMBER 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Mobile District and the City of Gainesville, Georgia (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, design and construction of the Flat Creek Watershed Aquatic Ecosystem Restoration Project for aquatic ecosystem restoration (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Hall County, Georgia in the Chattahoochee River Basin was approved by the Director of Programs, South Atlantic Division on December 9, 2011, pursuant to the authority contained in Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330; hereinafter "Section 206");

WHEREAS, performance of *monitoring* (as defined in Article I.O. of this Agreement) was approved as part of the *Project*;

WHEREAS, Section 206 provides that $50,000,000 in Federal funds are authorized to be appropriated for each *fiscal year* to carry out projects pursuant to Section 206 and no more than $10,000,000 in Federal funds may be allotted for a project at any single locality;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for design and construction of the *Project*;

WHEREAS, Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project,

or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean Flat Creek Watershed Aquatic Ecosystem Restoration as generally described in the Detailed Project Report, Flat Creek Watershed Aquatic Ecosystem Restoration, dated September 2011 and approved by the Director of Programs, South Atlantic Division on December 9, 2011.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project* and the *pre-PPA planning and design costs* incurred by the Government. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's *pre-PPA planning and design costs* and the Government's design costs incurred after the effective date of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's engineering and design costs during construction; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's costs of *monitoring* in accordance with Article II.I. and Article II.J. of this Agreement; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to

Article II.B.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction and *monitoring* of the *Project* are complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. and Article II.C.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term "*functional portion of the Project*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Mobile District (hereinafter the "District Engineer") in writing, although the remainder of the *Project* is not complete.

I. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

K. The term "*Section 206 Project Limit*" shall mean the $10,000,000 statutory limitation on the Government's financial participation in the planning, design, and construction of the *Project* as specified in Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330).

L. The term "*Section 206 Annual Program Limit*" shall mean the statutory limitation on the Government's annual appropriations for planning, design, and construction of all projects implemented pursuant to Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330). As of the effective date of this Agreement, such limitation is $50,000,000.

M. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

N. The term "*pre-PPA planning and design costs*" shall mean all costs incurred by the Government prior to the effective date of this Agreement for planning and design of the *Project*.

O. The term "*monitoring*" shall mean activities, including the collection and analysis of data, that are necessary to determine if predicted outputs of the *Project* are being achieved.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project* or commence design of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental

Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter "NEPA"). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute 35 percent of *total project costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; and (b) the value of the

Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the *Section 206 Project Limit* and the *Section 206 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 35 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

2. In accordance with Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330), the Government's total financial obligations for planning, design, and construction of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with paragraph H. of this Article) shall not exceed the *Section 206 Project Limit*. Notwithstanding any other

provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article VI.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for all projects implemented pursuant to Section 206 has reached the *Section 206 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 206 Annual Program Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 206 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

D. When the District Engineer determines that, except for *monitoring*, the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

F. Upon the District Engineer's determination that, except for *monitoring*, the entire *Project* is complete, the Government shall conduct an interim accounting, in

accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of design and construction* the Government shall amend the interim accounting to complete the final accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the *Project*.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

I. Prior to completion of construction of the *Project*, the Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall finalize the plan for *monitoring* of the *Project*. The *monitoring* plan shall describe the specific parameters to be monitored; how these parameters relate to achieving the desired outcomes; methods for measuring those parameters; frequency and duration of *monitoring* of the *Project*; criteria for measuring the success of the *Project*; preparation and distribution of *monitoring* reports and other coordination requirements; and estimated *monitoring* costs. As of the effective date of this Agreement, the costs of *monitoring* for the *Project* are estimated to be $76,000.

J. Upon providing notification to the Non-Federal Sponsor that the *Project* is complete in accordance with paragraph D. of this Article, the Government shall perform *monitoring* of the *Project* in accordance with the *monitoring* plan for a period of 5 consecutive years from the date of such notification. The Government's performance of *monitoring* shall be concurrent with the Non-Federal Sponsor's performance of operation, maintenance, repair, rehabilitation, and replacement for the completed *Project*. The *monitoring* of the *Project* by the Government shall end prior to the expiration of such 5 year period upon the occurrence of either of the following events: (1) the award of the next contract for *monitoring* of the *Project*, or continuation of *monitoring* of the *Project* using the Government's own forces, would result in the costs incurred for *monitoring* of the *Project* exceeding 1 percent of the amount equal to *total project costs* minus the costs for *monitoring* of the *Project*; or (2) the District Engineer determines that continued *monitoring* of the *Project* is not necessary.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the *Project*, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

L. The Non-Federal Sponsor shall not use the *Project*, or the lands, easements, and rights-of-way required pursuant to Article III of this Agreement, as a wetlands bank or mitigation credit for any other project.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way

required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in

49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the *Project*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this

Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for

items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement also shall include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is $10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Georgia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the

improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.H.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; finalization of the *monitoring* plan; performance of *monitoring*; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project* has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be $1,916,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be $284,000; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be $0; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be $386,600; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be $0; the *non-Federal proportionate share* is projected to be 23.69 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be $0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be $0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 15, 2014 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.B.3. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for design of the *Project* or commencement of design of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement. Not later than

such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share* of *financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share* of *financial obligations for design and construction* as *financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon the District Engineer's determination that, except for *monitoring*, the entire *Project* is complete and all relevant claims and appeals and eminent domain proceedings have been resolved, the Government shall conduct an interim accounting and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting or amend the previous interim accounting, as applicable, and furnish the Non-Federal Sponsor with written notice of the results of such interim or amended interim accounting, as applicable. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 206 Project Limit* and the *Section 206 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for additional work and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such financial obligations for additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of such financial obligations for additional work to complete the final accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the Government's total financial obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the Government's total financial obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, *monitoring*, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books,

records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3)

the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; hereinafter "CERCLA"), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with

Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain,

repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Horace Gee
City of Gainesville
Environmental Services Administrator
2641 Old Flowery Branch Road
Gainesville, Georgia 30504

If to the Government:

District Commander
U.S. Army Corps of Engineers, Mobile District
P.O. Box 2288
Mobile, Alabama 36628

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the *Section 206 Project Limit*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for aquatic ecosystem restoration, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BY: _____
JON J. CHYTKA
Colonel, U.S. Army
District Commander
Mobile District

DATE: 9/30/14

CITY OF GAINESVILLE, GEORGIA

BY: _____
C. Danny Dunagan, Jr.
Mayor
City of Gainesville, Georgia

DATE: 9/29/14

Approved as to Form:

_____
City Attorney, City of Gainesville

ATTEST:

_____
City Clerk, City of Gainesville

CITY OF GAINESVILLE GEORGIA CHARTERED 1821

CERTIFICATE OF AUTHORITY

I, JAMES E. PALMOUR III do hereby certify that I am the principal legal officer of the City of Gainesville, Georgia, that the City of Gainesville, Georgia is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Gainesville, Georgia in connection with the Flat Creek Watershed Aquatic Ecosystem Restoration Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Gainesville, Georgia have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 24th day of September, 2014.

James E. Palmour III

James E. Palmour III
Attorney, City of Gainesville, Georgia

ATTEST:

Denise O. Jordan

City Clerk, City of Gainesville

CITY OF GAINESVILLE
GEORGIA
CHARTERED 1821

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

C. Danny Dunagan, Jr.
Mayor
City of Gainesville, Georgia

DATE: 9/24/14

ATTEST:

Denise O. Jordan
City Clerk, City of Gainesville

CITY OF GAINESVILLE GEORGIA CHARTERED 1821

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/25/2017

Presenter: Horace Gee

Item of Business: PR-2017-24 Midtown Greenway Extension, Stormwater Detention Pond and Watershed Improvement Project

Meeting Date: 8/15/2017

Purpose of Request:

To authorize the purchase of eight (8) separate tax parcels, as well as the design and construction of an extension of the current Midtown Greenway Park.

History/Background:

In January 2009, the Department of Water Resources (DWR) of the City of Gainesville initiated a comprehensive Greenway and Watershed Restoration project within the Midtown area of Gainesville. The first phase consisted of a stream restoration project of a portion of Flat Creek, and included the installation of a Regional Detention Pond; this project was completed in May 2010. To build on this important first step, in August of 2010, DWR partnered with the Community Development Department to start the design of phase two of this comprehensive plan. This phase would include the installation of a number of Stormwater enhancements, the restoration of an additional portion of Flat Creek, and the construction of what is now known as the Midtown Greenway Park. This phase was completed in April 2012.

Facts & Issues for Consideration:

In December 2016, DWR updated its Watershed Improvement Plan (WIP) as required by the Environmental Protection Division (EPD) as a condition of our wastewater discharge permits; this document identified several new watershed projects that would build upon our efforts to improve water quality within our jurisdiction and the Chattahoochee/Lanier Basin. Of these, the highest priority project was identified as FL-5, which is just above the Midtown Greenway Park. This project will consist of a stormwater pond and an additional segment of stream restoration which would complement our Midtown area and extend the current park. To facilitate this project, the City needs to purchase eight (8) parcels of property. This project will extend our efforts to maintain clean, safe water for years to come, while helping to revitalize this area.

Department Recommendation:

The Department of Water Resources believes installing additional stormwater controls within the Flat Creek Watershed and extending the Midtown Greenway will provide multiple benefits to both water quality and quality of life for our community, while also helping spur the revitalization of the Midtown area at the same time. As this project is both required by our wastewater permits and clearly beneficial to our community, DWR highly recommends the support of the City.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

Amount Requested:

$2,825,000.00

Source of Funds:

Department of Water Resources Capital Projects Fund

Finance Comments:

Administrative Comments:

ATTACHMENTS:

	Description	Type
	PR-2017-24 Midtown Greenway Ext. Stmwtr Detention Pond and Watershed Impr Proj	Resolution
	Attachment-A	Backup Material
	Attachment-B	Backup Material

RESOLUTION PR-2017-24

MIDTOWN GREENWAY EXTENSION, STORMWATER DETENTION POND AND WATERSHED IMPROVEMENT PROJECT

WHEREAS, the City of Gainesville ("the City") wishes to preserve and protect the water quality of Lake Lanier and other local bodies of water; and

WHEREAS, the City is within the Metropolitan North Georgia Water Planning District (MNGWPD), a region identified for special water management objectives by the State of Georgia; and

WHEREAS, in 2016 the Georgia Environmental Protection Division (GA EPD) accepted and approved the updated Watershed Improvement Plan developed by the City; and

WHEREAS, the City's Watershed Management Plan and the MNGWPD require the development and implementation of watershed improvement projects on impaired bodies of water as required by our two National Pollutant Discharge Elimination System (NPDES) Permits for Flat Creek and Linwood Water Reclamation Facilities; and

WHEREAS, Resolution BR-2010-09 defined the boundaries of the Midtown Redevelopment Area, which has suffered from blighted and/or underdeveloped land, and which is delineated on the map labeled Attachment A. These characteristics contribute to or cause unemployment, limit tax resources of the City while creating a greater demand for government services, and constitutes an economic and social liability; and

WHEREAS, the approved Watershed Improvement Plan identified several watershed improvements within the City of Gainesville, with the highest priority project being identified as FL-5 and which is contained within the boundaries of the Midtown Redevelopment Area as shown on the map labeled Attachment B; and

WHEREAS, the City has identified eight (8) parcels within the Midtown Redevelopment Area which could benefit from growth in the area if it were transformed into an extension of the Midtown Greenway Park, and which would also incorporate a number of watershed improvement components such as a stream restoration project and a stormwater detention pond as identified in the 2016 Watershed Improvement Plan (WIP); and

WHEREAS, City staff has negotiated in good faith with the property owners for the purchase of the eight (8) parcels of properties for the aggregate amount of $900,000.00; an additional $75,000.00 is required for the acquisition and demolition activities, as well as for the legal fees and other necessary expenditures in order to proceed with the aforementioned project; and

WHEREAS, the City of Gainesville DWR desires to order and facilitate the design and construction of an extension to the Midtown Greenway Park, which will include a number of the watershed and stormwater improvement components identified by the 2016 WIP Project ID: FL-5, and which is further described in Attachment B, and is requesting $1,700,000.00 for such design and construction.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby authorizes the Mayor, City Manager, City Attorney and City staff to acquire said properties in accordance with the Uniform Land Acquisition Policy of the City of Gainesville on behalf of the City of Gainesville Department of Water Resources, to initiate such proceedings, perform such acts and to execute such documents as necessary to complete the purchase, design, and construction.

RESOLUTION PR-2017-24

MIDTOWN GREENWAY EXTENSION, STORMWATER DETENTION POND AND WATERSHED IMPROVEMENT PROJECT

BE IT FURTHER RESOLVED THAT an additional $150,000.00 to cover staff salaries, contingency and other expenses is also authorized for a not-to-exceed total of $2,825,000.00 for this project, said expenditure shall be from the Department of Water Resources Capital Projects Fund.

Adopted this _____ day of _____, 2017.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

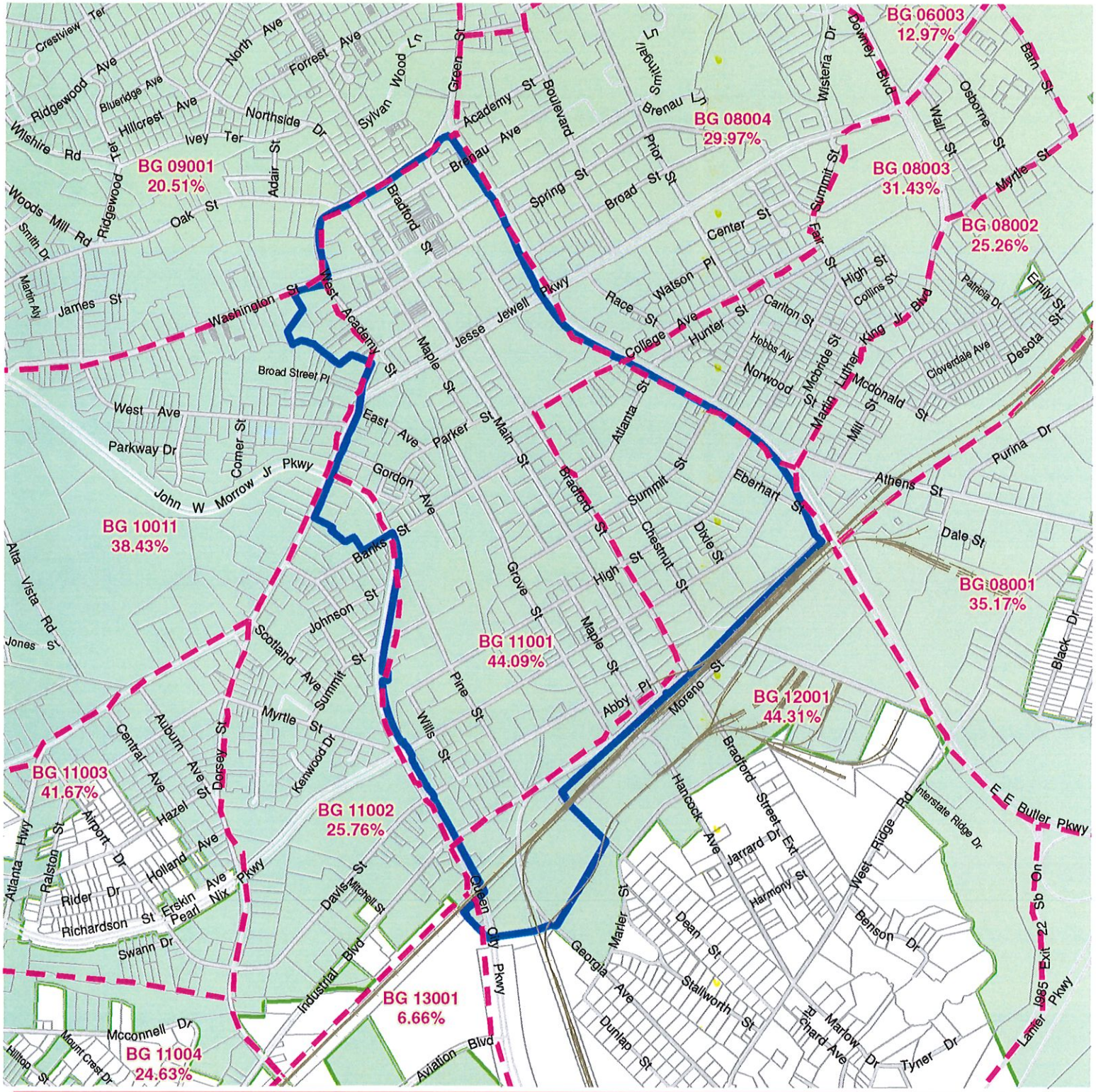
_____

Denise O. Jordan, City Clerk

City of Gainesville

Attachment - A

Midtown Redevelopment Area



City of Gainesville
Land District 9; Land Lots 148, 149, 152, 153 & 154
Map Prepared: January 5, 2010

Opportunity Zone Administrator
Rusty Ligon, Community Development Director
311 Henry Ward Way
P O Box 2496
Gainesville, GA 30503
(770) 531-6570

Map Preparer
Mark Lane, GISP, GIS Manager
P O Box 1435
Gainesville, GA 30503
(770) 531-6809

1 inch = 1,200 feet

Urban Redevelopment Area
Gainesville City Limits
Parcels
Streets
Census Block Group Boundary

Census Block Broup: BG 11001
Poverty Level Percentage: 44.09%

0 250 500 1,000 1,500 2,000 2,500 3,000 Feet

Attachment - B

Project Description and Evaluation | **Project ID: FL-5**

2016 Watershed Improvement Plan | **Project Type: Stream Restoration and Stormwater BMP**

Project Description

This WIP project would continue to build on the existing downstream restoration work, adding in additional restored channel to improve downstream water quality. The stormwater BMP and restored reach will provide additional downstream flood protection from small events and the location is ideal for public involvement opportunities. The project includes a stream restoration (daylighting) of an existing piped channel in the headwaters of Flat Creek located upstream of an existing stream restoration project. Project includes a Priority 1 stream restoration re-establishing the existing piped stream to a natural state including channel realignment, grade control, and a reconnection of the stream to the floodplain. Additionally, the project includes the installation of a stormwater BMP in the northwest portion of the property that would provide stormwater attenuation of flow from an adjacent property. The property is located adjacent to the existing Flat Creek Greenway recreational trail and public education components including educational signs and a trail have been included as project elements.

Watershed and Site Characteristics

Watershed:	Flat Creek	BMP Footprint Area:	0.2 acres
Project Location	Parker Street	BMP Max Depth:	8 feet
Latitude:	34° 17.650' N	Construction Services	$443,322
Longitude:	83° 49.590' W	Engineering Services	$435,600
Stream Restoration Length:	442 feet	Total Estimated Project Cost	$878,922
		Class 5 Cost Estimate Range:	$439,461 - $1,757,844

Project Feasibility

The project area includes a parcel of land that may be acquired by the City. The parcel is located immediately upstream of the existing Flat Creek stream restoration project completed in 2012 and is adjacent to the highly visible Flat Creek Greenway recreational trail. Future development in the immediate vicinity of the project area will need to address stormwater impacts and the installation of a stormwater BMP along with the restoration of this section of Flat Creek will help mitigate flooding issues and impacts to the downstream channel. The location also provides another opportunity to educate local citizens further with respect to stormwater and the City's efforts to improve local waters.

Conceptual Design Components Included in Project

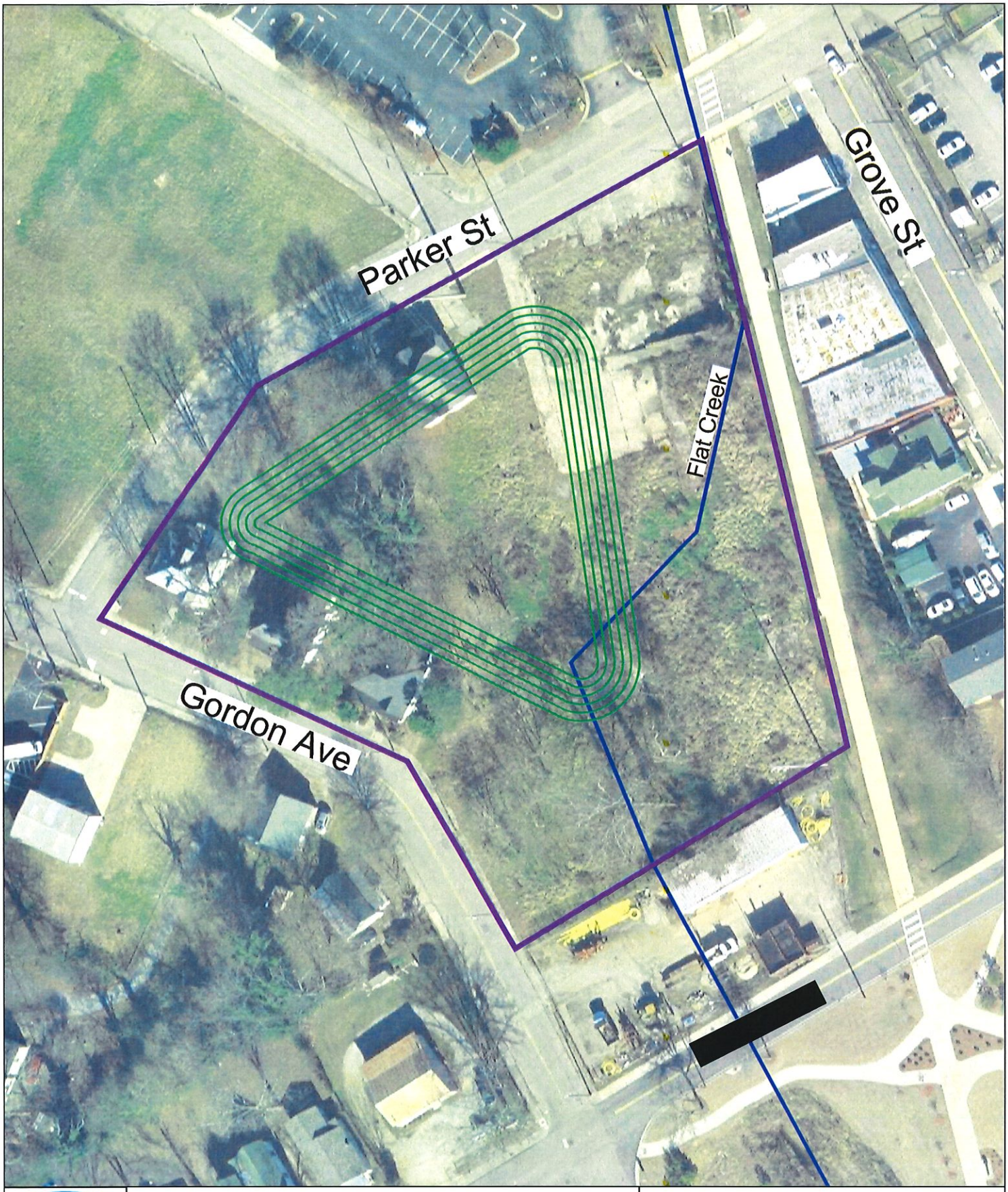
Stormwater Pond - Includes excavation and haul of materials, new stormwater infrastructure including piping, manholes, headwalls, outlet control structure and spillway

Stream Restoration - Includes excavation of channel, installation of in-stream structures, existing pipe removal, installation of new pipe, removal of invasive species, installation of trail and pedestrian bridge.

Project Scoring

Criteria	Score (0-5)	Criteria	Score (0-5)	
303(d) Listing	5	Upstream Imperviousness	5	
Green Infrastructure	3	Stormwater Structure Repair	3	
WQ/Bio Improvement	5	Sewer Structure Repair	1	
Community Partnership	1	General Infrastructure Repair	1	
Outreach	3	Site Access	5	
Education	5	Grant Funding	5	
Flood Protection	3	Constraints	3	
Restoration Length	5	Implementation Timeframe	3	
Channel Conditions	5	Public / Private Land	5	Max Score
Riparian Conditions	5	**Total**	**71**	95 points

Attachment - B



CITY OF GAINESVILLE
DEPARTMENT OF WATER RESOURCES

PLAN VIEW OF RESTORATION PROJECT

Scale: Not To Scale

N

JULY 2017

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/18/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-17**
Amend Chapter 6-4 entitled Alcoholic Beverages
AN ORDINANCE TO AMEND CHAPTER 6-4 ENTITLED "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

Approval of an amendment to the City's Alcoholic Beverage Ordinance to address recent changes in State Law regarding Breweries and Brewpubs, clarify regulations for tastings and samples, and the establishment of a Downtown Dining District. Additionally as with the other related Ordinance amendments, these changes serve to clarify the City staff that are identified as having a role or responsibility in the processing and enforcement.

History/Background:

Over the past few months, the City has been evaluating changes to its Ordinances related to Alcohol and Occupational Tax. These proposed changes to this Ordinance and three other related Ordinances are being present to ensure the City conforms with the new State Laws and at the same time realigns its resources to best meet the needs of the Business Community within the City of Gainesville.

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-17.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested: **Source of Funds**:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
2nd Reading: Ordinance 2017-17 Amend Chapter 6-4 Alcoholic Beverages	Ordinance

First Reading: 08/01/2017
Passed:

AN ORDINANCE

No. 2017-17

AN ORDINANCE TO AMEND CHAPTER 6-4 ENTITLED "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Chapter 6-4 of the Code of the City of Gainesville Georgia is hereby amended to read as follows:

ARTICLE 1. PURPOSE AND LICENSING

Sec. 6-4-1. General Policies and Purpose.

(a) Alcoholic beverages may be sold, manufactured, distributed and imported in the City of Gainesville only after the issuance of a license for such sale by the City and only in the manner permitted by said license, unless exempted by state law. Alcoholic beverages may be sold, manufactured, distributed and imported in the City only by a licensee who complies with the rules and regulations of this Ordinance, and with the licensing, regulatory and revenue requirements of the State of Georgia.

(b) Notwithstanding anything in this chapter to the contrary, the sale of alcoholic beverages in the city is a privilege and not a right, and the issuance of a license hereunder shall not create any property rights in the licensee.

(c) The city council designates the city manager for the purpose of administering this chapter. Any powers granted to or duties imposed upon the city manager may be delegated by the city manager to other city personnel. The city manager or designee shall be responsible for the interpretation of the requirements, standards, definitions, or any other provision of this chapter, unless that authority is provided to another administrative official within a specific article. Interpretations of the city manager or designee may be appealed under the provisions of section 6-4-11. The city manager or designee shall have administrative authority of this code.

(d) Each licensee of the City shall display the license prominently at all times at the premises for which the license is issued.

(e) The holder of every alcoholic beverage license hereunder shall have available in his place of business at all times a copy of this chapter and shall be responsible for compliance herewith by all persons on the premises.

(f) Any premises outlets which cannot be determined as one (1) identifiable place of business shall require additional licenses regardless of such establishments having the same tradename, ownership, or management.

(g) The purposes of this Ordinance include but are not limited to the following:

1. Compliance with state law.
2. Prevention and control of the sale of alcoholic beverages by unfit persons.
3. Protection of the public health, safety, and general welfare.

Sec. 6-4-2. Definitions.

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

(a) *Alcoholic beverage* means any beverage containing alcohol and shall include but shall not be limited to, malt beverages, wines and distilled spirits.

(b) *Alcoholic beverage caterer* means any retail dealer who has been licensed by the city to sell alcoholic beverages by the drink or the unopened package.

(c) *Art Shop* means a retail business devoted exclusively to providing art education that is limited to instruction in painting, sculpture and similar crafts. An art shop may also sell and display portraits, paintings, sculptures, art supplies and similar art work and crafts. An art shop shall not allow activities that would cause the business to be an "adult entertainment establishment" as defined in Chapter 6-10 of this Code.

(d) *Authorized catered event* means an event at a location not otherwise licensed for consumption of alcoholic beverages by the drink at which alcoholic beverages are furnished, for consideration, and sold, dispensed or provided free of charge to persons present at the event, by the drink, pursuant to a permit obtained under this section.

(e) *Business* means any person, corporation, partnership, or other legal entity which exerts substantial efforts within the city, engages in, causes to be engaged in, and/or represents or holds out to the public to be engaged in any occupation or activity with the object of gain or benefit, either directly or indirectly.

(f) *Brewery* means a place where malt beverages are manufactured. In addition to manufacturing, malt beverages may be sold for consumption on the premises, and/or sold by the package for consumption off the premises in accordance with State law.

(g) *Brewpub* means any restaurant in which malt beverages are manufactured, subject to the barrel production limitation prescribed in O.C.G.A § 3-5-36. Barrels of malt beverage sold to licensed wholesale dealers for distribution or to the public for consumption off the premises as authorized by State law shall not be used when determining the total annual gross food and beverages sales.

(h) *BYOB* or *brown bagging* means possession of an open glass bottle, can, or other container containing an alcoholic beverage or consumption of an alcoholic beverage on premises:

1. For which a city business/occupation tax certificate has been issued; and
2. Which occurs at a location different from where said alcoholic beverage was purchased.

(i) *Church* means a body of communicants gathered into church order: united under one (1) form of government by the profession of the same faith and the observance of the same ritual and ceremonies, place where persons regularly assemble in a facility for worship, congregation, or organization for religious purposes.

(j) *College Campus* means a collection of two or more buildings used for educational purposes, on either one parcel or contiguous parcels that are under the same ownership by either a public or private institution of higher learning.

(k) *Distilled spirits* means any alcoholic beverage obtained by distillation or containing more than twenty- four (24) percent alcohol by volume percent alcohol by volume,

(l) *Establishment* means any physical location or section thereof for the operation of a business.

(m) *Food caterer* means any person who holds a valid business license and for consideration, prepares food for consumption off the premises.

(n) *Fortified wine* means any alcoholic beverage containing not more than twenty-four (24) percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentations with brandy added. The term includes, but is not limited to “brandy.”

(o) *Georgia Farm Winery* means a farm winery which is licensed by the state to manufacture wine in Georgia.

(p) *Growler* means a reusable, resealable, and professionally sanitized glass jug used to transport malt beverages or wine for off-premises consumption that is not to exceed 64 ounces and is filled with malt beverages or wine from a keg by a licensee, or an employee of a licensee, with a malt beverage and/or wine license for consumption off premises issued by the City of Gainesville.

(q) *Hard cider* means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than six (6) percent alcohol by volume, including, but not limited to flavored or carbonated cider. For purposes of this chapter, hard cider shall be deemed a malt beverage.

(r) *Importer* means any person who imports an alcoholic beverage into this state from a foreign country and sells the alcoholic beverage to another importer, broker or wholesaler and who warehouses a stock of the alcoholic beverage.

(s) *Licensed alcoholic beverage caterer* means any person licensed for the sale of alcoholic beverages by the state and who possesses a license by a local government in the state authorizing such person to sell or dispense alcoholic beverages by the drink off licensed premises and in connection with an authorized catered function.

(t) *Licensee* means any person who holds a license from the city to engage in the selling, manufacturing, distributing or importing at retail or wholesale, of any alcoholic beverages.

(u) *Lounge* means a separate room connected with a part of and adjacent to a restaurant with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least forty (40).

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

(w) *Managing Agent* means an individual that is at least twenty-one (21) years of age, is a U.S. citizen or an alien lawfully admitted for permanent residency, is a resident of the State of Georgia, has day-to-day managerial authority over the business conducted on the licensed premises including the sale of alcoholic beverages, and is employed full-time by the licensed business.

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

1. In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits;
2. In the case of malt beverages, any brewer; and
3. In the case of wine, any vintner

(y) *Minor* means any person less than twenty-one (21) years of age.

(z) *Multi-use facility* means a structure containing three or more retail or office establishments and one or more eating establishment, which has a court area for pedestrian use.

(aa) *Non-profit, charitable and civic organization* means a bona fide nonprofit civic organization which is exempt from federal income tax pursuant to the provisions of subsection (c), (d), or (e) of 26 U.S.C. Section 501.

(bb) *Nonprofit botanical garden or nature science center* means a facility primarily used to develop and maintain animals or plant collections, including flowers, shrubs and trees, for public display, education, research, conservation and enjoyment, through, without

limitation, horticultural gardens, public and private programs, exhibitions and special events, having not less than 75 acres of outdoor gardens or land preserved for conservation, containing a documented collection of living plants, shrubs and trees, having meeting event space with a capacity for not less than 100 people, that is owned by a corporation that is exempt from federal income taxes pursuant to section 501(c) of the Internal Revenue Code, as amended.

(cc) *Open air café* means a premise located within the pedestrian court area and adjacent sidewalk of a multi-use facility where food is available for purchase during all hours of operation and where alcoholic beverages may be purchased from a restaurant contained within the multi-use facility for consumption within the open air café.

(dd) *Person* means any individual, firm, partnership, cooperative, nonprofit membership corporation, social club, joint venture, association, company, corporation, limited liability company, limited liability partnerships, agency, syndicate, estate, trust, business trust, receiver, fiduciary or other group or combination acting as a unit, body politic or political subdivision, the plural as well as the singular member, whether public, private or quasi-public.

(ee) *Premises* means one physically identifiable place of business operated by the same ownership and/or overall management consisting of one or more contiguous rooms with only one address registered as a single place of business with the local licensing authority and the state. “Premises” is further defined to include the following areas:

1. In the case of hotels, motels or private clubs, the swimming pool which is owned by said hotel, motel or club.
2. Outdoor areas or patios approved pursuant to this chapter.
3. In the case of a malt beverage and/or wine licensee where a golf course is located adjacent to and contiguous with a restaurant, the playing area of the golf course.
4. In the case of a nonprofit botanical garden or nature science center, the geographic grounds.
5. In the case of an open air café, the pedestrian court area and sidewalk in front of the building in which the multi-use facility is contained.
6. In the case of the Gainesville Civic Center, the geographic grounds of the Gainesville Civic Center and the Martha Hope Cabin.
7. In the case of a brewery, an adjacent outdoor area, contained on the same property utilized by the licensee, that is controlled to limit public access.

(ff) *Private club* means any nonprofit association organized under the laws of this state which:

1. Has been in existence at least one (1) year prior to the filing of its application for a license to be issued pursuant to this chapter;
2. Has at least seventy-five (75) regular dues-paying members;

3. Owns, hires or leases a building or space within a building for the reasonable use of its members, which building or space:
    i. Has suitable kitchen and dining room space and equipment; and
    ii. Is staffed with a sufficient number of employees for cooking, preparing and serving meals for its members and guests; and
4. Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary as defined by state law.

(gg) *Private function* means any affair where attendance is by invitation only, where no business transactions are conducted during the private function and there is no cost to attend or to consume the food or alcohol either by donations or by any other means.

(hh) *Residence* means the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit or the place where one actually lives as distinguished from his domicile or place of temporary sojourn.

(ii) *Resident* means a person whose primary residence is within the territorial limits of the county.

(jj) *Restaurant* means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment, air conditioned, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests for every hour they are open. At least one (1) meal per day shall be served at least five (5) days a week, except that restaurants that open for business more than five (5) days a week, shall be required to serve at least one (1) meal per day each day that the restaurant is open, with the exception of holidays, vacation and periods of redecoration, and the serving of such meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall provide at least thirty (30) seats for customers.

(kk) *School* means an organized source of education or training whether public or private for the teaching of children in which the traditional subjects and learning processes associated with the Pre-K - 12 grades of school are taught.

(ll) *Tasting room* means an outlet for the promotion of a Georgia Farm Winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.

(mm) *Wholesaler or Wholesale Dealer* means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers. This shall include any person that transports or delivers alcoholic beverages from a manufacturer for sale at retail by the package.

(nn) *Wine tasting* means an event as defined in the rules and regulations of the department of revenue.

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

Sec. 6-4-3. Qualifications for Licensing.

(a) To qualify for an alcoholic beverage license, an applicant shall meet the following:

1. Designate a managing agent that meets the defined qualifications in Section 6-4-2. In the case of a non-profit private club, the managing agent may be an officer of the non-profit private club in lieu of a full-time employee if the individual is otherwise qualified.
2. All licensed establishments must have and continuously maintain in Hall County a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. The registered agent must be a resident of Hall County. The licensee shall file the name of such agent, along with the written, notarized consent of such agent with the city in such form as may be prescribed.
3. Have a certificate of occupancy that has been issued by the City for the premises for which an alcoholic beverage license is sought.

(b) Where the application is made on behalf of a corporation, partnership, limited liability corporation, limited liability partnership or sole proprietorship, the license shall be issued jointly to the organization and an individual that meets the qualifications of a managing agent.

Sec. 6-4-4. The Application Process.

(a) Any person desiring to obtain an alcoholic beverage license in the City shall submit a written and signed application on forms provided by City and in connection therewith, shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, bonds and other supporting data as required by the City.

(b) All applications for licenses to sell alcoholic beverages of any kind shall be made in person by the applicant to the city manager or designee and shall contain but not be restricted to the following statements and information:

1. The name, age, address and length of residency of applicant.

2. The name of the corporation, partnership, sole proprietorship, or other organization applying for the license. Said name shall include the legal name as well as the trade name of the business.

3. A statement of whether the applicant or any person with an interest in the application has made application at any previous time for any alcoholic beverage license and the disposition of such application.

4. Whether the applicant or any person with an interest in the application has ever been convicted of a crime, other than for traffic violations.

5. Whether a previous license issued to the applicant or any person with interest in the application has been revoked by any state or subdivision thereof or by the federal government and the reason therefor.

6. The identity of any other person interested directly or indirectly in the profits or losses or both of the proposed business.

7. The physical address and detailed plans of such building and outside premises, and evidence of ownership of the building, or a document that evidences the right of the applicant to use the premises, including but not limited to a deed, lease, sublease, management agreement, concession agreement, shall be attached to the application.

8. Every new application for a package license hereunder shall be accompanied by a drawing to scale, showing the nearest church, school or college or by the affidavit of a registered surveyor that the proposed location of the business complies with the distance requirements as specified in this chapter. Applications for renewal of licenses, or for premises that have been licensed in the preceding 12 months, are exempted from this subsection.

(c) Every managing agent, owner and interest holder listed in an application for an alcoholic beverage license shall be fingerprinted in a manner prescribed by the city.

(d) The license fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application. Any person who is doing business on or after the first day of January shall pay the full annual license fee without proration; provided, however, that if an application is filed after July 1st, the license fee shall be one-half (½) of the annual license fee for such calendar year.

(e) All new applications for alcoholic beverage licenses shall be accompanied either by lawful money of the U.S., or by a certified check, cashier's check or money order, payable to the city for the proper amount of the license fee. If the application is denied or if the applicant withdraws the application prior to its being issued, the license fee shall be refunded, less a one hundred fifty dollar ($150.00) administrative fee which shall be retained by the city.

(f) The city license issued shall be valid for the calendar year indicated thereon and shall expire at midnight on the last day of the year.

(g) All applications for alcoholic beverage licenses shall be filed with and approved by the city manager or designee provided the applicant meets all of the requirements and qualifications of this chapter.

(h) The written application for the license shall be a permanent record, and the licensee must maintain current and accurate information within said application as required by this chapter.

Sec. 6-4-5. Grounds for Denial of Application.

(a) The following shall be sufficient cause for the denial of an application:

1. Failure of the applicant to meet the qualifications for licensing as set forth in this chapter.
2. The making of any untrue or misleading statement in the application for an alcoholic beverage license.
3. Failure to meet distance requirements as provided in this chapter.
4. Where it appears that the applicant would not have adequate participation in the proposed business to direct and manage its affairs, or where it appears that the application is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license for any reason whatsoever.

(b) When contrary to the public interest and welfare, no license to sell alcoholic beverages of any kind shall be issued to or for:

1. Any person by reason of such person's business experience, trade associations, personal associations, record of arrest, or reputation in any community in which he has resided, who is not likely to maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.
2. Any person who has been convicted under any federal, state or local law of any felony involving moral turpitude.
3. Any person who has been convicted under any federal, state or local law of any felony not involving moral turpitude within ten (10) years immediately preceding the filing of application for such license.
4. Any person convicted under any federal, state or local law of a misdemeanor, particularly, but not limited to, those involving alcoholic beverages, gambling or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.

5. A location not suitable in the judgment and discretion of the city because of traffic congestion, general character of the neighborhood, or by reason of the effect which such an establishment would have on the adjacent and surrounding properties or on the neighborhood.

6. A location within an area where, in the judgment of the city manager, the number of alcoholic beverage licenses already granted makes it contrary to the public interest or welfare.

7. A location at which the operation of the proposed business would be in violation of the City's Unified Land Development Code.

8. A location at which a previous alcoholic beverage license has been revoked or suspended, and where, in the judgment of the city manager, the problems which have arisen from the operation of an alcoholic beverage license at such location indicate that it is not in the interest of public health, safety, welfare or morals that the sale of alcoholic beverages be permitted at such location.

9. A person or location which the granting of such license would constitute a violation of state law or regulations.

10. The operation of a distilled spirits package business licensed hereunder by any person already holding two (2) such licenses.

11. Any person who is as close kin as brothers or sisters, by blood or marriage, to one already holding two (2) distilled spirits package licenses under this chapter.

12. Any trustee or director of a private club, if disqualified under this chapter.

Sec. 6-4-6. Renewal of Licenses.

(a) The city manager or designee may approve all applications for renewal of an existing license upon payment of the license fees for renewal of licenses, where no objections have been raised by the City Manager or designee and the application clearly shows no change in the ownership, managing agent, location, or operation of the business.

(b) A licensee that desires to continue in business during the next or subsequent calendar year must make application for such year, on or before November 15th of the preceding year. License fees for such year shall be submitted on or before December 15 of the preceding year. Any license fee submitted after the due date of December 15th, shall be considered delinquent and assessed a penalty in the amount of ten (10) percent of the fees due. Interest on delinquent fees shall be assessed at one (1) percent for each month or fraction thereof of delinquency.

(c) If objections have been raised by the City Manager or designee due to previous violations of this chapter or if there have been any changes in the ownership, managing agent,

location, or operation of the business, a new application must be submitted to the city manager or designee.

Sec. 6-4-7. Duty to Remain Current.

(a) It is the duty and responsibility of the licensee to notify the city manager or designee of any changes to the information contained in the original application. Any amendments to the original application shall be made in writing on forms provided by the city manager or designee and shall be under oath and verified as otherwise required of license applications.

(b) Failure to maintain a current application shall be grounds for revocation of the license.

(c) In the event the "managing agent" either ceases to be employed by or ceases to have day-to-day managerial oversight of alcoholic beverage sales, the licensee shall notify the city within five (5) days of the change and must follow the requirements to transfer the license to a new “managing agent” as set forth in section 6-4-8 (b). If the applicant does not meet the qualifications for “managing agent” as required by this chapter and the city manager or designee recommends denial, the applicant may have a hearing as set out in Section 6-4-11.

(d) In the event the "registered agent" changes, the licensee shall notify the city within ten (10) days of the change and must submit written information on forms provided by the city. A fee as required in Title 10 will be charged for the processing of a change in the "registered agent."

(e) No person shall have, own or enjoy any ownership, interest in, share in the profits from, or otherwise participate in the business of any alcoholic beverage licensee in the city unless a full description of such interest is furnished to the city manager or designee at the time such interest arises. It shall be the duty of the licensee to report to the city manager or designee, within twenty (20) days, any change in any interest in such licensee's business including but not limited to:

1. Any division of the profits;
2. Any division of net or gross sales for any purpose whatsoever;
3. Any change in the payment of rents or leases;
4. Any change in the ownership of any lease or building or land used in such business;
5. Any change in the ownership of any corporation that has any interest in such business or the change of management of such corporation.

(f) After receipt of notice pursuant to Section 6-4-7(e), the city manager or designee shall notify such person within thirty (30) days of any objection to the ownership or interest set forth therein, based on the interest holder’s ability to qualify as a licensee under this

chapter. In the event such interest is not disposed of in accordance with the objections set forth by the city manager or designee within thirty (30) days after the mailing of the notice by the city manager or designee, or in the event no objections are mailed to the licensee within such thirty-day period, or in the event such person fails to notify the city manager or designee of the transfer of any such interest within twenty (20) days after the acquisition thereof, then the license as provided for herein may be subject to suspension or revocation by the city manager or designee.

(g) The licensee shall make all reports required by this section in the form required by the city manager or designee, and such reports shall be an amendment to the licensee's permanent license application on file with the city and as such shall be under oath and verified as otherwise required of license applications.

Sec. 6-4-8. Transfer of Licenses.

(a) No city license may be transferred from one (1) person or from one (1) location to another without permission and approval of the city manager or designee upon receipt of a written application made. Approvals as to any change shall be at the discretion of the city manager or designee.

(b) In the event of a change in the managing agent of a licensee, the city license shall remain in effect pending approval or denial of the transfer provided:

1. The licensee notifies the city manager or designee within ten (10) days of the change of the managing agent;
2. The licensee submits a proper written application for approval thereof;
3. The licensee pays a transfer fee as required by Title 10;
4. The transferee meets all qualifications of a managing agent as required by this chapter; and
5. There has been no change of ownership, location or operation of the business.

(c) Any licensee desiring to discontinue business at one (1) location and commence business at some other new location must make a complete new application for such new location. Upon proper application and provided that there has been no change of ownership or interest in the business, the city manager or designee may permit the license to be transferred upon payment of a fee required in Title 10 for a change of location, provided that the licensee and the new location meet all qualifications required by this chapter. The fee for a change of location shall be in addition to the original license fee paid by the licensee for the calendar year.

(d) Upon the sale of an existing business, the city license issued for that business location shall remain in effect pending approval or denial of a new application by the city manager or designee, provided that the buyer or transferee meets all the qualifications of a

managing agent as required by this chapter, and provided that the buyer or transferee has immediately upon the date of sale or prior to the date of sale made proper written application and has paid the original license fee required by Title 10.

Sec. 6-4-9. Right to Investigate.

(a) Upon receipt by the city manager or designee of any application for an alcoholic beverage license, or for the transfer of any license, each person listed on the application shall consent to a criminal background check on the forms supplied by the city manager or designee.

(b) The city manager or designee, the chief of police, or any policeman of the city may enter upon the premises operated under the provisions of this chapter during operating hours for the purpose of inspecting the premises and enforcing this chapter and shall have access during the inspection of all books, records, and supplies relating to the sale, storage or possession of alcoholic beverages.

Sec. 6-4-10. Surrender, Suspension or Revocation of License or Imposition of a Monetary Administrative Penalty.

(a) The following may be grounds for the suspension and/or revocation of an alcoholic beverage license or for the imposition of a monetary administrative penalty against the licensee.

1. The violation by the licensee of any state or federal law or regulation, except misdemeanors or any ordinance of the city, other than traffic violations. The determination of whether any such violation has occurred shall be made by the administrative hearing officer and an actual conviction in a court for such offense shall not be necessary in order to suspend or revoke the license or issue a monetary administrative penalty.

2. The failure of the licensee or his employee to report promptly to the police department any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, occurring on the premises.

3. Any conduct on the part of the owner of the business, the licensee or his employee contrary to the public welfare, safety, health or morals. While not to be considered a comprehensive or exhaustive listing of prohibited behavior, specific instances of prohibited behavior by the owner, the licensee and/or his employee include, but are not limited to, the following:

    a. Consumption or being under the influence of alcoholic beverage while working or on duty;

    b. Breach of the peace, disturbance or altercation resulting in violence;

c. The conviction of any felony reasonably related to the ability of the licensee to operate and maintain the premises in a proper manner;

d. The violation of any state law or regulation governing the manufacture, sale, distribution or transportation of alcoholic beverages;

e. The violation of any section of O.C.G.A. § 10-1-370 et seq., known as the Uniform Deceptive Trade Practices Act, reasonably related to the operation of licensed establishments;

f. The conviction of the owner or the licensee of driving under the influence of alcoholic beverages and/or drugs on two (2) or more occasions;

g. Permitting the solicitation of patrons on the licensed premises for prostitution or any other unlawful act where the licensee or the licensee's employee or agent knew or should have known of such conduct;

h. The selling or serving of any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be in a state of intoxication;

i. The failure to comply with any and all federal, state or municipal tax laws and regulations applicable to the operation of establishments licensed to sell alcoholic beverages;

j. Failure by the licensee to adequately supervise and monitor the conduct of the employees, patrons and others on the licensed premises or on any property owned or leased by the owner or licensee, including but not limited to parking lots and parking areas, or on any parking lots or areas which may be lawfully used by patrons of a licensed establishment, in order to protect the safety and well-being of the general public and of those utilizing the premises.

4. Operating or conducting the business in a manner contrary to the public welfare, safety, health or morals, or in such manner as to constitute a nuisance. Any combination totaling three (3) or more of the following occurrences within any thirty-day period shall constitute prima facie evidence that the licensee is operating or conducting an alcoholic beverage business in a manner which is contrary to the public welfare, safety, health or morals, or in such manner as to constitute a nuisance: Three (3) or more violations of law, violations of municipal ordinances, breach of the peace, disturbance or altercation resulting in violence, all occurring on the premises. The business license holder shall, upon suspension for violations of this section, have the burden of proving such occurrences were beyond his control and not related to the operation of his business.

5. The violation of any state law or regulation or municipal ordinance pertaining to alcoholic beverages.

6. The violation of any provision contained in this chapter.

(b) For the purposes of this section, the definition of an employee shall include any agent or independent contractor that is working for hire on the licensed premises.

(c) The city manager or designee, with an order from the Gainesville Municipal court and/or administrative hearing officer, shall have the right to suspend any alcoholic beverage license pending a hearing as provided for in Section 6-4-11 where in the judgment of the city manager or designee such action is necessary to protect the public health, safety, welfare or morals.

(d) The city manager or designee, chief of police or any police department shift commander on duty at the time may close any location holding an alcoholic beverage license for a period not in excess of twenty-four (24) hours in the event there shall occur on the premises any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, or other occurrence which is contrary to the public health, welfare, safety or morals, when in the judgment of the city manager or designee, chief of police or shift commander such action is necessary to protect the public health, welfare, safety or morals.

(e) In the case of the revocation or surrender of an alcoholic beverage license before expiration, the holder thereof shall not be entitled to receive any refund or fees paid to the City regarding the license to sell alcoholic beverages.

(f) All licenses issued pursuant to this chapter shall be valid only so long as the licensee is actively engaged in such business, with the exception of holidays, vacations, and periods of redecoration, and in the event the licensee shall cease to be actively engaged in such business such license shall be invalid and the licensee of such business shall immediately notify the city manager or designee and return his license thereto.

(g) The violation of any of the provisions of this chapter by a holder of an alcoholic beverage license, or his agent, or employee, shall be unlawful, and shall be punishable as provided in Section 1-1-7 of this Code, and shall also subject the holder of such license to suspension or revocation of such license or monetary administrative penalty, or any combination thereof as the city manager or designee deems proper.

Sec. 6-4-11. Hearing on Denial, Suspension or Revocation or Imposition of Monetary Administrative Penalty.

(a) Before the denial of any application, including a renewal application, for an alcoholic beverage license or for the transfer of any alcoholic beverage license, or the revocation or suspension of any existing alcoholic beverage license, or for the imposition of a monetary administrative penalty against a licensee, the applicant or licensee, as the case may be, shall be given notice in writing from the city manager or designee to show cause before an administrative hearing officer at a time and place specified therein not less than three (3) days nor more than thirty (30) days from the date of service of the notice, why such application for license or for transfer of license should not be denied, or why such

license should not be revoked or suspended as the case may be, or why a monetary administrative penalty should not be imposed, stating the grounds therefor, and at the appointed time and place the applicant or licensee shall have an opportunity to show cause, if any exist, why such application should not be denied or such license revoked or suspended or a monetary administrative penalty imposed after which the administrative hearing officer shall take such actions as he or she in his or her judgment and discretion, shall deem warranted under the facts.

(b) The decision of the administrative hearing officer shall be final unless appealed by certiorari to the superior court of Hall County.

(c) In all instances of a denial of any application for an alcoholic beverage license or the revocation of any existing alcoholic beverage license, the applicant, licensee or any person(s) with twenty-five (25) percent or more interest, shall not reapply for a license for at least one (1) year from the final date of the denial or revocation.

Sec. 6-4-12. Employee Permits.

(a) No person shall be employed to dispense, sell, serve, take orders, or mix alcoholic beverages, or be in any managerial position, by an establishment holding a license for the sale of distilled spirits by the package or for consumption on premises or an establishment holding a license for malt beverage or wine for consumption on premises unless such person has been approved by the Chief of Police or his designee. The individual named on the alcoholic beverage license as the managing agent for such establishment shall be exempt from obtaining an employee permit.

(b) Upon approval by the Chief of Police or his designee, such person shall be issued an employee permit which shall contain the name, expiration date, fingerprint and photograph of such employee. Such employee permit shall remain the property of the city and shall be in the possession of the employee at any time he or she is working at any licensed establishment, and shall be produced upon the request of any law enforcement officer of the city.

(c) No permit shall be issued until such time as a signed application has been filed with the Gainesville Police Department and upon the payment of the non-refundable fee designated in Title 10 of this Code. The applicant shall furnish, at the time of presenting the application, two (2) forms of valid, current identification. Such application shall contain the following information: Applicant's name, date of birth, height, weight, race, sex, address, telephone number, and disclosure of arrest record. Applicant must give permission to the police department to obtain and inspect any criminal history on such applicant which is in the possession of any law enforcement agency.

(d) No person shall be granted an employee permit that has been convicted, plead guilty, or entered a plea of nolo contendere to any crime involving the sale or furnishing of alcoholic beverages to an underage person or any felony within three (3) years of the date of the application.

(e) No person shall be granted an employee permit if he or she has been the holder of an alcoholic beverage license or employee permit which has been revoked within five (5) years of the date of the application.

(f) An employee permit shall be valid for three (3) years from the date of issue. At the expiration of three (3) years, the employee permit may be renewed upon the submission of a renewal application, the payment of the appropriate fee, and upon determination that such individual remains qualified under this chapter.

(g) The employee permit is non-transferable and is valid only for the individual named on the permit. Such permit is valid for the individual named while employed in any establishment licensed in the city.

(h) An employee permit may be suspended or revoked by the Chief of Police if it is determined that the individual has violated any provision of this chapter or committed any offense which would make him or her ineligible to hold such a permit.

(i) Falsifying or failing to disclose any information required by this chapter shall be grounds for denial or revocation of the employee permit.

(j) Notification of any denial, suspension, or revocation of an employee permit shall be in writing and served either in person or by certified mail and shall contain the reasons for such action and the notice of the right to appeal the decision.

1. Decisions of the Chief of Police that adversely affect or aggrieve any applicant, certificate holder, or permit holder under this chapter may be appealed to the Administrative Hearing Officer, as defined in Section 1-8-1 of this Code. All appeals shall be submitted in writing to the Chief of Police within ten (10) calendar days after notification of the adverse decision.

2. A hearing shall be conducted on each appeal within thirty (30) days of the date of the filing of the written appeal, unless a continuance of such hearing is agreed to by the appellant and the Chief of Police, or unless the hearing is rescheduled by the Administrative Hearing Officer. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses.

3. The appellant shall be notified in writing of the date and time of the hearing at least three (3) calendar days prior to the date of the hearing.

4. The findings of the Administrative Hearing Officer shall be final unless appealed within thirty (30) days of the date of the finding by certiorari to the Superior Court of Hall County.

(k) No licensee shall allow any employee or manager required to hold an employee permit to work on the premises unless the employee or manager has in their possession a current valid employee permit. Provided, however, that an individual may be employed for a period

of time not to exceed fourteen (14) days pending the submission of the application to and the approval of the permit by the Police Department.

Sec. 6-4-13. – Sec. 6-4-19. Reserved.

ARTICLE 2. MALT BEVERAGE AND WINE MANUFACTURERS

Sec. 6-4-20. Malt Beverage Breweries or Wineries.

(a) No individual shall be permitted to own or operate a brewery without first obtaining a proper brewery license from the City. A licensed brewery shall comply with State law relating to the limited sale of malt beverages to the public and may sell on all days and at all times that sales of malt beverages by retailers are lawful within the City.

(b) A Georgia Farm Winery may engage in retail package sales of wine in a tasting room or the retail consumption sales on premises of its wine and the wine of any other Georgia Farm Winery in a tasting room.

Sec. 6-4-21. – 6-4-29. Reserved.

ARTICLE 3. EXCISE TAX ON MIXED DRINKS CONSUMED ON PREMISES

Sec. 6-4-31. Definitions.

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

(a) *Agent* means the person designated by the licensee in this application for permit to sell alcoholic beverages by the drink.

(b) *Drink* or *mixed drink* shall include any distilled spirits served for consumption on the premises, which may or may not be diluted by water or other substance in solution.

(c) *Licensee* means any person who holds a license from the city to engage in the sale of distilled spirits by the drink for consumption on the premises.

(d) *Monthly period* means the calendar months of any year.

(e) *Purchase price* means the consideration received for the sale of distilled spirits by the drink valued in money, whether received in cash or otherwise, including receipts, cash, credit, property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

(f) *Purchaser* means any person who orders and gives present or future consideration for any distilled spirits by the drink.

(g) *Return* means any return filed or required to be filed as herein provided.

(h) *Tax* means the tax imposed by this section.

Sec. 6-4-32. Imposition and Rate of Tax.

There is hereby imposed and levied upon every purchaser of a distilled spirits purchased by the drink within this city a tax in the amount provided in Title 10.

Sec. 6-4-33. Collection of Tax.

(a) Every licensee or his agent is hereby authorized and directed to collect the tax imposed herein from purchasers of distilled spirits by the drink within the licensed premises. Such licensee or agent shall furnish such information as may be required by the city to facilitate the collection of the tax.

(b) In all cases where the collection of food and drinks is by deferred payment or credit, the licensee is liable at the time of and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The city shall have authority to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

Sec. 6-4-34. Determination, Returns and Payments.

(a) The tax imposed by this article shall become due and payable from the purchaser at the time of purchase of any mixed drink in this city. All amount of such taxes collected by the licensee shall be due and payable to the city monthly on or before the twentieth day of every month next succeeding each respective monthly period for which this tax is imposed; provided, however, that upon a proper showing that the tax imposed will not be collected until after a regular billing period of the collecting agent, then the collection of the tax may be deferred by the city for an additional period not exceeding thirty (30) days.

(b) On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the city in such form as the city may prescribe by every licensee liable for the payment of tax hereunder. All returns shall show the gross receipt of the sale of distilled spirits by the drink and the amount of the tax collected on such drinks.

(c) Licensees collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under State Law.

Sec. 6-4-35. Deficiency Determinations.

(a) If the city has cause to believe that the return or returns of the tax or the amount of the tax required to be paid to the city by any person is not proper, it may compute and determine the amount required to be paid upon the basis of any information that is within or may come into its possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly period.

(b) The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof from the due date of taxes.

(c) The city or its designated representatives shall give to the licensee written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the licensee at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.

(d) Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire.

Sec. 6-4-36. Determination if No Return Made.

(a) If any person fails to make a return, the city shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total sales in this city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is in possession of or may come into the possession of the city official. Written notice shall be given in the manner prescribed in section 6-4-35 (c).

(b) The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof, from the due date of taxes.

Sec. 6-4-37. Penalty for Nonpayment.

Any person who fails to pay the tax herein imposed or fails to pay any amount of the tax required to be collected and paid to the city within the time required shall pay a penalty of twenty-five (25) percent of the tax or amount of the tax, in addition to the tax or amount of the tax plus interest on the unpaid tax or any portion thereof as set forth in Section 6-4-36 (b).

Sec. 6-4-38. Action for Collection.

(a) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the city may bring an action in the courts of this state any other state or of the United States in the name of the city to collect

the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(b) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be offset against any future liability for the tax.

Sec. 6-4-39. Overpayment.

If the licensee determines that he has overpaid or paid more than once, which fact has not been determined by the city, he will have three (3) years from the date of payment to file claim in writing with the City Manager stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it was paid, or from his administrators or administrators.

Sec. 6-4-40. Purchasers or Successors of Business.

(a) If any licensee liable for any amount under this chapter sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the city either a receipt reflecting full payment or a certificate stating that no amount is due.

(b) If the purchaser of a business fails to withhold purchase as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

Sec. 6-4-41. Administration.

(a) Every licensee for the sale of alcoholic beverages by the drink in the city shall keep such records, receipts, invoices and other pertinent papers in such form as the city may require.

(b) The city or any person authorized in writing by the city may examine the books, papers, records, financial reports, equipment and other facilities of any licensee for sale of distilled spirits by the drink and any licensee liable for the tax in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

(c) In administration of the provisions of this subsection, the city may require the filing of reports by any person or class of persons having in such person's or persons' possession or custody information relating to purchases which are subject to the tax. Reports shall be filed with the city when required by the city and shall set forth the purchase price for each purchase, the date or dates of purchase, and such other information as the city may require.

Sec. 6-4-42. Violations.

(a) Any person violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-1-7 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the subsection is committed, continued or permitted by such person, and shall be punished accordingly. Any licensee or any other person who fails to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the city or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid.

(b) Any person violating any of the provisions of this article may, in addition to the other penalties and liabilities provided for herein, have his license or permit revoked as provided for previously herein.

Sec. 6-4-43. – 6-4-49. Reserved.

ARTICLE 4. EXCISE TAX REQUIRED OF WHOLESALE DEALERS

Sec. 6-4-50. Imposition of Tax.

There is hereby levied and imposed upon each wholesale dealer and manufacturer distributing malt beverages, wine or distilled spirits within the city an excise tax in the amounts fixed in Title 10.

Sec. 6-4-51. Payment of Taxes.

(a) Payment of excise taxes for the distribution of malt beverages, wine or distilled spirits shall be remitted by the tenth day of each month following the month in which deliveries were made.

(b) Copies of the "summary of sales" showing delivery by each supplier to retailers and/or consumption on the premises licensees shall be furnished to the city's finance department with each monthly payment.

Sec. 6-4-52. – 6-4-59. Reserved.

ARTICLE 5. MALT BEVERAGE AND WINE – ORIGINAL PACKAGE

Sec. 6-4-60. Distance Requirements.

(a) No malt beverage and/or wine shall be offered for sale or sold in an unopened package within one hundred (100) yards of any school building, school grounds or college campus. This subsection shall not apply:

1. To a grocery store licensed for the retail sale of only wine and malt beverages for consumption off the premises, which shall be allowed to sell wine and malt beverages within 100 yards of any school building, school grounds or college campus. As used in this subparagraph, the term “grocery store” means a retail establishment which has a total retail floor space of at least 10,000 square feet of which at least 85 percent is reserved for the sale of food and other nonalcoholic items and conducts all of its sales inside the building containing its retail floor space.

2. To any premises or location where an alcoholic beverage license was issued or approved prior to July 1, 1981, so long as alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter.

3. To any premises or location where alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter and a school or college campus is built or erected within the minimum distances provided for in this section.

(b) No malt beverage and/or wine shall be offered for sale or sold in an unopened package within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government.

(c) All measurements to determine distances required by this chapter shall be measured as provided for in Section 6-4-110.

Sec. 6-4-61. Hours of Sale.

The hours of sale of malt beverages and wine at retail and not for consumption on premises are from 7:00 a.m. to 11:45 p.m. on Monday through Saturday and from 12:30 p.m. to 11:30 p.m. on Sunday.

Sec. 6-4-62. Growler Sales.

Package malt beverage licensees or wine licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with malt beverages and/or wine at the licensed location subject to the following requirements:

(a) At least ninety (90) percent of the licensee's total gross sales are from packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of four hundred (400) square feet of floor space dedicated to the display of malt beverages and/or wine offered for sale.

(b) A growler shall not exceed sixty-four (64) ounces. Growlers may only be filled from kegs or barrels procured by the licensee from a duly licensed wholesaler.

(c) Only professionally sanitized and sealed growlers may be filled and made available for retail sale.

(d) Each growler must be securely sealed and removed from the premises in its original sealed condition.

(e) Samples of tap malt beverages or wine may be made available. No individual shall be allowed to sample more than a total of twenty-four (24) ounces per day which shall be comprised of at least four (4) different varieties of malt beverages or wine.

(f) A licensee may charge a fee for samples of tap malt beverages or wine.

Sec. 6-4-63. No Consumption on Premises.

(a) It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of malt beverages or wine by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises.

(b) This section shall not apply for the holder of a temporary limited license as provided for in this chapter during the hours for which the temporary limited license is valid.

Sec. 6-4-64. – Sec. 6-4-69. Reserved.

ARTICLE 6. DISTILLED SPIRITS – ORIGINAL PACKAGE

Sec. 6-4-70. Distance Requirements.

(a) No distilled spirits shall be offered for sale or sold in an unopened package within one hundred (100) yards of any church building or within two hundred (200) yards of any school building, education building, school grounds or college campus.

(b) A new retail package liquor licensed place of business or the relocation of an existing retail package liquor licensed place of business engaged in the retail package sales of distilled spirits shall not be located within five hundred (500) yards of any other business licensed to sell package liquor at retail.

(c) The distance provided for herein shall not apply:

1. To any premises or location where alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter and a school or church is built or erected within the minimum distances provided for in this section.

2. To any premises or location licensed as an importer, so long as the same is allowed by the state; provided, however, no signs or other forms of advertisement shall be placed on or near the licensed premises, which directly or indirectly advertise that alcoholic beverages are stored or warehoused on the premises.

(d) No distilled spirits shall be offered for sale or sold in an unopened package within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government.

(e) All measurements to determine distances required by this chapter shall be measured as provided for in Section 6-4-110.

Sec. 6-4-71. Hours of Sale.

(a) The hours of sale of distilled spirits at retail and not for consumption on premises are from 8:00 a.m. to 11:45 p.m. on Monday through Saturday and from 12:30 p.m. to 11:30 p.m. on Sunday.

(b) No retail dealer of distilled spirits shall be in, or permit others to be in, its place of business Monday through Saturday any time prior to 6:00 a.m. or thirty (30) minutes past the closing time. No retail dealer of distilled spirits shall be in, or permit others to be in, its place of business on Sundays prior to 10:30 a.m. or 30 minutes past the closing time.

Sec. 6-4-72. No Consumption on Premises.

It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of distilled spirits by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises.

Sec. 6-4-73. Sufficient Lighting Required.

The building in which each retail dealer of distilled spirits in the unbroken package is located shall contain sufficient lighting so that the building itself, the premises and all entrances are readily visible at all times from the street on which the building is located so as to reveal the inside retail area of the building and so as to reveal all of the outside premises of such building.

Sec. 6-4-74. – Sec. 6-4-79. Reserved.

ARTICLE 7. CONSUMPTION ON PREMISES OF ALCOHOLIC BEVERAGES

Sec. 6-4-80. Distance Requirements.

(a) No malt beverages, wine and/or distilled spirits for consumption on the premises may be offered for sale, sold or dispensed within one hundred (100) yards of any property containing three hundred (300) housing units or fewer, which property is owned or operated by a housing authority created by OCGA § 8-3-1 et seq., also known as the Housing Authorities Law. This subsection shall not apply at any location for which a license has been issued prior to July 1, 2000, or to the renewal of such license.

(b) All measurements to determine distances required by this Chapter shall be measured as provided for in Section 6-4-110.

Sec. 6-4-81. Hours of Sale.

(a) The hours of sale for consumption by the drink on the premises where sold are from 8:00 a.m. to 1:30 a.m. on Monday through Friday, from 8:00 a.m. on Saturday through 1:30 a.m. on Sunday, and from and 12:30 p.m. on Sunday to 1:30 a.m. on Monday.

(b) All alcoholic beverages shall be removed, from the area of the premises utilized by customers or patrons within forty-five (45) minutes after the closing time for the sale of alcoholic beverages.

Sec. 6-4-82. Food Volume Ratio for Restaurants.

(a) Restaurants shall maintain at least fifty (50) percent of their business volume from the sale of food, private clubs exempted. Food sales shall include all consumable items sold on the premises except alcoholic beverages. The fifty-percent ratio shall be determined on a calendar quarter basis by review of the monthly report submitted by each licensee.

(b) Monthly reports for the preceding month's alcohol and food sales shall be submitted on forms provided by the city on or before the 20th day of the month.

(c) In the event food sales fall below fifty (50) percent of the business volume of the licensee for any two (2) consecutive quarters, then the City Manager or designee may request a hearing for the suspension or revocation of such license in accordance with Section 6-4-11. Nothing herein provided shall prevent the City Manager or designee from suspending or revoking such license for any other violations of this chapter.

(d) Authorized officials of the city may examine the records of businesses licensed hereunder at any reasonable time to ascertain that the requirements of this and other provisions of this chapter are met.

Sec. 6-4-83. Sales Volume Ratio for Select Businesses.

Any business required to pay a business occupation tax that does not meet the criteria in Section 6-4-82, Section 6-4-84, or Section 6-4-85 may obtain a consumption on premises license for malt beverages and wine subject to the following conditions:

(a) The sale of alcoholic beverages shall be clearly incidental to the primary business conducted on the premises.

(b) Consumption on the premises licensees shall maintain at least sixty (60) percent of their business volume from the sale of merchandise or services, not including alcoholic beverages. The sixty-percent ratio shall be determined on a calendar quarter basis on the monthly report submitted by each licensee.

(c) Monthly reports for the preceding month's alcohol and retail or services sales shall be submitted on forms provided by the city on or before the 20th day of the month.

(d) No alcoholic beverages shall be served on Sunday.

(e) To qualify for a license, a retail or business establishment must be open to the public for business a minimum of 32 hours per week.

Sec. 6-4-84. Volume Ratio Exemptions.

Business establishments that have a valid consumption on premises license for malt beverages, wine or distilled spirits and meet the following requirements are exempt from the food sales ratios as provided in Section 6-4-82 and retail sales ratios as provided in Section 6-4-83 above:

(a) There shall be no fee, donation or cover charge collected or required to obtain entrance into the business or a requirement to purchase any food or beverages.

(b) The business shall have a maximum occupancy load of seventy-five (75) individuals with seating arranged and set for at least fifty (50) percent of the maximum occupancy load. Folding chairs, lawn furniture or other furniture that, in the opinion of the City Manager or designee, is not "set" is not in compliance with this subsection and shall not be allowed.

(c) No alcoholic beverages shall be served on Sunday.

(d) Sales of alcoholic beverages are subject to the provisions of Section 6-4-81, except that the business may not open prior to 4:00 p.m. on Monday through Friday or prior to 11:00 a.m. on Saturday.

(e) Entertainment shall be allowed provided that no sound shall be audible beyond the licensed premises.

Sec. 6-4-85. Non-Profit Organizations with Facilities.

(a) Non-profit organizations meeting the criteria of subsection (b) below may obtain a consumption on premises license subject to the following conditions:

1. The sale of alcoholic beverages shall be clearly incidental to the primary function of the non-profit organization on the premises.

2. No alcoholic beverages shall be served on Sunday except as provided by O.C.G.A. § 3-3-7.

(b) To qualify for a consumption on premises license, the nonprofit organization must be exempt from federal income taxes pursuant to section 501(c), (d) or (e) of the Internal Revenue Code and must have a building, facility or grounds that is primarily used for public education, research, conservation and enjoyment, or that serves as a repository for a collection of literary, natural, or scientific objects of interest, or works of art where such facility or building is arranged, intended, designed and open to be viewed by members of the public with or without an admission fee. This shall include, but not be limited to, nonprofit botanical gardens or nature science centers.

Sec. 6-4-86. Brown Bagging.

(a) It shall be unlawful for a licensee or any other business that has been issued a business occupation tax certificate to allow customers to bring with them their own alcoholic beverages, a practice commonly referred to as “BYOB” or “brown bagging.”

(b) It shall be unlawful for any alcoholic beverages to be served, stored, kept or consumed by any person on the premises of any business establishment for which a city business/occupation tax certificate has been issued, excluding those businesses with a valid alcoholic beverage license or as otherwise exempted by this chapter.

(c) The prohibitions in paragraph (a) shall not apply to a private function or an art shop as defined in this chapter.

(d) Art shops, as defined by this chapter are subject to the specific provisions governing the operation of an art shop:

1. An art shop may allow customers to bring in a bottle or bottles of wine and/or malt beverages to be consumed on the premises.

2. The customer must remove any unconsumed wine and or malt beverages from the premises before leaving the premises.

3. The brown bagging of wine and or malt beverages in an art shop shall be subject to this chapter and to state law; including but not limited to the prohibition of consumption by one who is under 21 years of age or intoxicated.

4. An art shop may serve food provided it meets all federal, state and local requirements.

Sec. 6-4-87. No Outside Consumption.

(a) A consumption on premises licensee shall not permit a purchaser to remove from the premises any alcoholic beverage from the premises, and it is the licensee's responsibility to ensure that no beverages are sold and carried out.

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

(c) It is prohibited for customers to gather outside a premises licensed to sell alcoholic beverages and consume alcoholic beverages.

(d) It is prohibited for the manager or any employee to allow persons to gather outside an alcoholic beverage premise and consume alcoholic beverages.

(e) This section shall not apply in the following instances:

1. For events that are sponsored or organized by the City of Gainesville where the alcohol is obtained from a participating business within any City designated

area, and is contained in and consumed from an approved, clear plastic container.

2. Where the City Council through a resolution has permitted otherwise.

3. For restaurants that have a valid sidewalk café permit provided that all outdoor activities are contained within the permitted sidewalk café.

4. For an open air café as defined by this chapter.

5. Beverages for consumption at a publicly owned or privately owned golf course.

6. For the carrying out of a partially consumed bottle of wine as defined in Section 6-4-88.

7. When a temporary limited license has been issued, provided that the person consuming or possessing an alcoholic beverage remains on the public sidewalk directly in front of the premises licensed to sell alcoholic beverages or within the open areas, sidewalks, decks, or similar unenclosed spaces on or about the premises licensed to sell alcoholic beverages.

8. For a Downtown Dining District as defined by this chapter.

(f) Downtown Dining District - Outside consumption of alcoholic beverages permitted.

1. For the purposes of this Chapter only, a Downtown Dining District is defined as follows: A specifically authorized and pedestrian oriented area of the City as established by resolution of Mayor and Council that allows those establishments with valid consumption on the premises licenses or establishments conducting growler sales within such area to dispense and/or serve an alcoholic beverage for carry out purposes, provided all other laws, rules and ordinances are followed.

2. Within a Downtown Dining District, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a clear plastic cup; provided, however, that no person shall remove more than one such alcoholic beverage from the licensed premises at a time.

3. Within a Downtown Dining District, no unsealed container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size. No person shall hold in its possession on the streets and sidewalks, in parks and squares, or in other public places within a Downton Dining District any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.

4. It shall be unlawful within a Downtown Dining District for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to

possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private.

5. No alcoholic beverage purchased pursuant to this provision may be consumed outside of the Downtown Dining District, or upon any private property, without the express consent of the private property owners.

6. Unless authorized by Mayor and Council in the Resolution creating the Downtown Dining District, no alcoholic beverage purchased within the Downtown Dining District pursuant to this provision shall be consumed within the Downtown Dining District on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private, prior to 12:00 p.m. or later than 12:00 a.m.

Sec. 6-4-88. Partially Consumed Bottles of Wine Purchased with a Meal.

(a) Any restaurant which is licensed to sell alcoholic beverages for consumption on the premises may permit a patron to remove one (1) unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the restaurant's premises.

(b) A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises.

(c) The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container.

(d) If transporting in a motor vehicle, the container with the resealed bottle of wine shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Sec. 6-4-89. Open Area and Patio Sales.

(a) Alcoholic beverage sales may be made by a licensed consumption on premises establishment in a patio/open area type environment if the establishment has been approved as provided in this section.

(b) The requirements for approval are:

1. The patio/open area must be enclosed by some structure providing for public ingress/egress only through the main licensed premises. The only exception to this would be a fire exit as required by building and fire codes. Such fire exit would not be for general public use unless an emergency exists and would be of the type which sounds an alarm so that the establishment would be alerted of unauthorized use if no emergency exists. The height of such structure shall be a minimum of

three and one-half (3.5) feet above the patio floor. The structure is not required to be solid nor does it have to restrict visibility into or out of the patio/open area. The patio/open area shall meet all setback requirements as set forth in the Unified Land Development Code.

2. The patio/open area shall not be required to be covered by a roof.

3. The patio/open area shall be used merely as an extension of the interior seating area. Service in the patio/open area shall be only by waiter or waitress or by customer self-service at an interior selling location; i.e. no outside bar or service window.

(c) It is prohibited for an establishment to be in violation of the City's noise ordinance as defined in Chapter 3-8 of the Code of Ordinances and to allow any noise to be created in a patio/open area which may be heard from a distance of one hundred (100) feet from the patio/open area. Any measurement made pursuant to this section shall describe the shortest straight line distance from the patio to the point in question.

(d) Patio/open area plans must be reviewed and approved on an individual basis by the City Manager or designee. Patio/open areas must be permitted and approved by the city's building inspection and fire departments as required by their governing regulations or codes.

(e) Nothing contained herein shall prohibit a hotel or motel with a consumption on the premises license from making sales and allowing consumption of alcoholic beverages in the patio areas of such hotel or motel. "Patio areas," as that term is used herein, do not have to conform to the standards in this section.

Sec. 6-4-90. Happy Hour Promotions.

(a) As used in this section, the term "*drink"* means a single portion beverage which contains any alcoholic beverage.

(b) This section shall be construed to cover, include and apply to all alcoholic beverages including malt beverages, wine and distilled spirits for consumption on premises by properly licensed establishments in the city. All consumption on premises licensees are prohibited from selling or giving away alcoholic beverages under the following circumstances:

1. Offering all you can drink for a set price during a set time.

2. Serving multiple drinks for a single price unless the drinks are part of a variety sampler of which no more than a total of sixteen (16) ounces can be served as part of the sampler and which sampler shall be comprised of at least four (4) different varieties of malt beverages or wine or three (3) different mixes containing distilled spirits.

3. Making a single price the basis for a required purchase of two (2) or more servings.

4. Serving alcoholic beverages by the pitcher, except to two (2) or more persons at any one (1) time.

5. Offering reduced-price drinks to any segment of the population for any period of time as an inducement to patronize the premises; except between the hours of 5:00 p.m. and 7:00 p.m. on Monday through Saturday, drinks may be sold at a reduced price which is no less than half the price usually charged.

6. Selling alcoholic beverages for less than half the normal retail price, or selling alcoholic beverages in pitchers or in jumbo sizes for less than half the normal retail price. Nothing contained in this subsection shall be construed to prohibit the dispensing of drinks in pitchers or in jumbo sizes, provided that such pitchers or jumbo sizes shall be available at all times that the licensee is open for business.

7. Using coupons or other special promotional items as an inducement to purchase alcoholic beverages.

8. Sponsoring, conducting or allowing contests or other promotions which have as their primary purpose increasing the consumption of alcoholic beverages.

9. Offering or delivering any free alcoholic beverages to the general public except as otherwise allowed by law.

(c) The prohibitions and restrictions in the foregoing subsection which apply to licensees or agents or employees of licensees shall not:

1. Apply at private functions;

2. Prohibit the offering of free food or entertainment at any time;

3. Prohibit including drinks as part of the price of a hotel, travel, entertainment, or meal package;

4. Prohibit the sale, offer to sell, or delivery of wine or malt beverage by the bottle, pitcher or carafe;

5. Prohibit any motel or hotel from offering room service to registered guests.

Sec. 6-4-91. Brewpubs.

(a) No individual shall be permitted to own or operate a brewpub without first obtaining a proper brewpub license from the city. Each brewpub licensee shall comply with all other applicable state and local license requirements.

(b) A brewpub license authorizes the holder of such license to:

1. Manufacture on the licensed premises not more than ten thousand (10,000) barrels of malt beverage in a calendar year solely for retail sale.
2. Operate a restaurant that shall be the sole retail outlet for such malt beverage and may offer for sale for consumption on premises any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, provided that such alcoholic beverages are purchased from a licensed wholesale dealer and, provided further, in addition to malt beverages manufactured on the premises, each brew pub licensee shall offer for sale commercially available canned or bottled malt beverages purchased from a licensed wholesale dealer.
3. Sell up to a maximum of five thousand (5,000) barrels annually of such malt beverage to licensed wholesale dealers. Under no circumstances shall such malt beverages be sold by a brewpub licensee to any person holding a retail consumption dealer's license or a retailer's license for the purpose of resale.
4. Sell malt beverages manufactured on the premises by the package for consumption off the premises.

(c) Possession of a brewpub license shall not prevent the holder of such license from obtaining any other license available under this chapter for the same premises.

(d) A brewpub licensee shall pay all state and local license fees and excise taxes applicable to individuals licensed under this chapter as manufacturers, retailers and, where applicable, wholesale dealers.

(e) Except as set forth in this section, a brewpub licensee shall be subject to all sections of this chapter.

Sec. 6-4-92. Private Clubs.

(a) Private clubs, meeting the definition of this chapter, are eligible to apply for a license for consumption on premises of alcoholic beverages.

(b) No license shall be issued or renewed for the sale of alcoholic beverages prior to the furnishing of evidence, satisfactory to the city, that such private club has been approved as a tax exempt entity by the IRS.

Sec. 6-4-93. Gainesville Civic Center.

(a) The sale of alcoholic beverages and consumption of mixed drinks on the premises of the Gainesville Civic Center shall be allowed.

(b) The Director of the Gainesville Parks and Recreation Department, or his designee, may hold an alcoholic beverage license for the Gainesville Civic Center. There shall be no alcoholic beverage license fee paid by the Director of the Gainesville Parks and Recreation Department or his designee.

(c) The consumption on the premises license provided for herein is exempted from the food sale requirements provided for in section 6-4-82 of this chapter.

(d) The city may solicit for proposals to be the designee for the Gainesville Parks and Recreation Department for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center.

(e) Any designee shall obtain a business occupation tax and an alcoholic beverage license for consumption on the premises under this chapter.

(f) The hours of sale of alcoholic beverages on the premises of the Gainesville Civic Center shall be the same as provided in Section 6-4-81.

Sec. 6-4-94. – 6-4-99. Reserved.

ARTICLE 8. EVENTS

Sec. 6-4-100. Non-Profit Special Temporary Event Permit.

(a) Bona fide non-profit charitable and civic organizations, colleges and universities desiring to sell alcoholic beverages may apply to the City Manager or designee for a special temporary event permit authorizing the organization to sell or distribute alcoholic beverages for a period not to exceed three (3) days as provided in rules 560-2-11-.02 and 560-2-11-.03 of the rules and regulations of the state department of revenue as amended from time to time.

(b) The non-refundable permit fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application for a special temporary event permit.

(c) Bona fide non-profit charitable and civic organizations, colleges and universities, if approved for a temporary event, may sell distilled spirits and malt beverages for consumption on premises only. Wine may be sold for consumption on the premises and by the unopened package subject to O.C.G.A. §§ 3-9-3, 3-9-4 and 3-9-5 and subject to distance requirements for package sales as outlined in this chapter. If the temporary event is a wine tasting, then the event shall also be subject to the provisions of section 6-4-104.

(d) Holders of a special temporary event permit shall be considered the same as any other licensee and subject to all laws, rules and regulations and other applicable sections of this chapter relating thereto.

(e) No more than six (6) permits may be issued to an organization in any one (1) calendar year pursuant to this section.

(f) Permits issued pursuant to this section shall be valid only for the place specified in the permit.

(g) Applicants under this section do not have to obtain alcohol bonds.

(h) If a designee has been appointed by the Gainesville Parks and Recreation Board for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center, then only the designee shall submit an application for a special temporary event permit to be held at the Gainesville Civic Center.

Sec. 6-4-101. For-Profit Special Temporary Event Permit.

(a) A for-profit organization desiring to sell alcoholic beverages may apply to the City Manager or designee for a special temporary event permit which, if issued, licenses the event for alcohol sales by the drink.

(b) A for-profit organization desiring to obtain a special temporary event permit, must possess a valid consumption on premises license for malt beverage, wine or liquor or a valid malt beverage, wine, or distilled spirits package license issued by the city.

(c) The non-refundable permit fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application for a special temporary event permit.

(d) Provided a special temporary permit has been issued to a for-profit organization, said organization shall be subject to all laws, rules and regulations and other applicable sections of this chapter relating thereto.

(e) Permits issued pursuant to this section shall be valid only for the place specified in the application.

(f) If a designee has been appointed by the Gainesville Parks and Recreation Board for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center, then only the designee shall submit an application for a special temporary event permit to be held at the Gainesville Civic Center.

(g) No special temporary event permit shall be issued within any property zoned central business during any event that is sponsored or organized by the City of Gainesville.

(h) The licensee for a permitted special temporary event shall designate and clearly mark, by the use of ropes, barricades, stanchions or similar devices, a specific area within which alcoholic beverages may be consumed.

(i) Applicants desiring to sell distilled spirits must obtain an alcohol bond as required by the City.

Sec. 6-4-102. Temporary Limited License.

(a) A retail dealer that is licensed to sell only malt beverages and/or wine by the package may apply for a temporary limited license to allow for the sale of malt beverages or wine by the drink for consumption on the premises.

1. Applications for the temporary limited license shall be made by the licensee in person with the City Manager or designee on forms provided by the City.

2. Payment of the non-refundable license fee as provided for in Title 10 shall be paid at the time the application is submitted.

(b) If issued, the temporary limited license shall be valid for a period not to exceed eight (8) hours.

(c) Any licensed retail dealer shall not be granted more than two (2) temporary limited licenses per calendar month.

(d) Any retail dealer receiving a temporary limited license under this section shall comply with all other provisions of this chapter not in conflict with this section.

Sec. 6-4-103. Catered Events.

(a) Annual licenses to cater alcoholic beverages by the drink on premises at authorized catered events may be obtained only by those persons, firms or corporations currently licensed by the city for the sale of alcoholic beverages by the drink or for sales of alcohol in the unbroken package.

(b) Any licensee desiring to obtain a license to be an alcoholic beverage caterer in the City shall submit, in person, a written and signed application on forms provided by City. Only a licensed alcoholic beverage caterer may distribute or sell alcoholic beverages by the drink at an authorized catered event, after the application and issuance of a catered event permit.

(c) Before a licensed alcoholic beverage caterer may sell or dispense alcoholic beverages at any authorized catered function, such caterer shall apply for a catered event permit from the City Manager or designee at least ten (10) working days prior to the event.

1. The application for a catered event permit shall include the name of the alcoholic beverage caterer, the caterer's license number, and the date, address and time of the event.

2. If the catered event permit is granted, it shall be good only for the specific event at the specified address and times set forth in the application, not in excess of eight (8) hours, unless otherwise approved by city council by resolution.

3. The permit shall be kept in the vehicle used to transport alcoholic beverages to the event at all times during which the permit is in effect.

(d) Caterers licensed by the city shall maintain a record of all alcoholic beverages transported for each event, and shall make report and remittance of such taxes with their regular monthly reports to the city.

(e) No alcoholic beverages shall be transported, distributed, or sold to other than licensed locations in the city, except to permitted catered events, unless otherwise authorized by this chapter or by state law.

(f) No licensed alcoholic beverage caterer shall employ any person under twenty-one (21) years of age to dispense, serve, sell or handle alcoholic beverages at authorized catered functions.

(g) No catered event permit will be issued for an event at the Gainesville Civic Center or any location with respect to which any alcohol license has been denied or revoked within the past twelve (12) months; nor for any location with respect to which conduct prohibited in this chapter has previously occurred.

(h) The hours and days of sale or distribution of alcoholic beverages at an authorized catered event shall be conducted in compliance with this chapter. Except as set forth above in this section, an off-premises permit holder must comply with all other provisions set forth in this chapter.

Sec. 6-4-104. Wine Tasting.

(a) A request to conduct a wine tasting may be approved by the City Manager or designee when such request is made in writing on an application furnished by the City Manager or designee, and a non-refundable fee as provided for in Title 10 is submitted. If issued, the wine tasting shall be conducted under the following conditions:

1. A wine tasting must comply with all local and state laws and regulations pertaining to the sale and distribution of alcoholic beverages in the state and the city.

2. No wine tasting may be conducted on the premises of any place of business licensed to sell distilled spirits in the unbroken package or container at retail.

(b) A bona fide non-profit charitable and civic organization that seeks to conduct a wine tasting shall comply with all requirements set forth in O.C.G.A. § 3-9-3, 3-9-4, and 3-9-5 and must make application twenty-five (25) days prior to the proposed event on forms supplied by the city.

(c) A for-profit organization that seeks to conduct a wine tasting and is not licensed shall comply with all requirements set forth in O.C.G.A. § 3-6-20 and must make application twenty-five (25) days prior to the proposed event on forms supplied by the city, and shall obtain the wine secured for the wine tasting through a wholesale dealer possessing a valid license to distribute wine issued by the city.

(d) Licensees that are licensed to sell wine in the unbroken package are exempt from the requirement to make application for a wine tasting if sixty (60) percent or greater of the total malt beverage and/or wine sales is derived from the sale of wine. Samples of wine may be made available for consumption on the premise provided no individual shall be

allowed to sample more than a total of sixteen (16) ounces per day. A licensee may charge a fee for samples of wine.

Sec. 6-4-105. Home Brew Special Events.

(a) Home brewed malt beverages for purposes of this section shall be limited to malt beverages produced by an individual(s) pursuant to the provisions of O.C.G.A. § 3-5-4 and any applicable rules and regulations of the Georgia Department of Revenue.

(b) A home brew special event may be conducted on the premises of any place of business licensed under this chapter for the sale, storage, or distribution of alcoholic beverages by the package or for consumption on the premises, or may be conducted at locations not otherwise licensed under this chapter.

(c) All applications for a home brew special event shall be submitted in writing to the City Manager or designee, on forms provided by the city, along with a payment of a non-refundable fee as outlined in Title 10.

(d) At a minimum, applicants shall provide the following information in their application:

1. Name, address, and contact number of the applicant;
2. Location of the event;
3. Date and times at which the event will be held;
4. Estimated number of participants in the event.

(e) Home brew special events shall be subject to the following regulations:

1. Events shall only be held during legal hours for drinking on premises as defined in this chapter.
2. Consumption of alcoholic beverages at the event shall be limited solely to home brewed malt beverages produced pursuant to O.C.G.A. § 3-5-4. Consumption of other alcoholic beverages shall be prohibited.
3. Consumption of home brewed malt beverages shall be limited solely to participants in and judges of the special event. For the purpose of this section, participants shall be either individuals submitting home brewed malt beverages to the event or individuals admitted to the event by the sponsor without having to submit a home brew.
4. At the event, home brewed malt beverages shall not be sold, offered for sale, or made available for consumption by the general public.
5. A home brew special event permittee shall not allow any person to take an open container of alcoholic beverage from the designated event area.

(f) A home brew special event permittee shall be subject to all laws, rules and regulations of the city and state, including the rules and regulations of the Georgia Department of Revenue and shall be subject to permit revocation for violation thereof.

Sec. 6-4-106. – 6-4-109. Reserved.

ARTICLE 9. RULES AND REGULATIONS

Sec. 6-4-110. Measurement of Distances.

(a) All measurements to determine distances required by this chapter shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:

1. In a straight line from the front door of the structure from which alcoholic beverages are sold or offered for sale;
2. To the front door of the building of a church, government-owned treatment center or a retail package store; or
3. To the nearest property line of the real property being used for school or educational purposes or property that is owned or operated by a housing authority.

Sec. 6-4-111. Grandfather Provision for Distance Requirements.

If the sale of alcoholic beverages was lawful at a location at any time during the 12 months immediately preceding an application for renewal or a new application for an alcoholic beverage license, the premises shall be grandfathered in regarding any distance requirements as outlined in this chapter.

Sec. 6-4-112. Sales on Election Day.

No malt beverages, wine or distilled spirits will be sold within two hundred fifty (250) feet of any polling place or of the outer edge of any building within which such polling place is established on primary or election days. As used in this section, the term “day” means that period of time beginning with the opening of the polls and ending with the closing of the polls.

Sec. 6-4-113. Responsibility of Licensees and Employees.

(a) No holder of a license authorizing the sale of alcoholic beverages in the city nor any agent or employee of the licensee, shall do any of the following upon the licensed premises:

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

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

3. Sell alcoholic beverages upon the licensed premises on any day or at any time when such sale or consumption is prohibited by law.

4. Permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practice on the licensed premises. Such misconduct shall be immediately reported to the city police department.

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

6. Add to the contents of a bottle or to refill empty bottles or in any other manner to misrepresent the quantity, quality or brand name of any alcoholic beverage.

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

(c) Receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a conveyance owned and operated by a wholesale dealer with a license from the city to make such deliveries. Transportation of alcoholic beverages by any other means shall be grounds for revocation of all licenses concerned.

(d) The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to the general public use is prohibited, except that private parties and conventions, or a properly permitted wine tasting, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and provided further that this prohibition shall not apply at private clubs hereunder, nor to the sale for consumption hereunder to the registered guests of any hotel or motel in their designated rooms.

(e) All alcoholic beverages shall be stored only on the premises for which the license is issued.

Sec. 6-4-114. Financial Interest Prohibited.

It shall be unlawful for any person to hold an alcoholic beverage license (package or consumption) who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license (package or consumption) to or accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.

Sec. 6-4-115. Employment of Minors.

(a) No person shall allow or require a person in his employment under eighteen (18) years of age to dispense, serve, sell or take orders for any alcoholic beverages for consumption on premises.

(b) No person shall allow or require a person in his employment under eighteen (18) years of age to sell or take orders for any distilled spirits in the unopened package.

(c) No person shall allow or require a person in his employment under sixteen (16) years of age to sell or take orders for any malt beverages or wine in the unopened package.

Sec. 6-4-116. Regulations Involving Minors.

(a) The following regulations involving minors shall apply:

1. No person knowingly, by himself or through another, shall furnish, cause to be furnished, or permit any person in his employ to furnish any alcoholic beverage to any person under twenty-one (21) years of age.

2. No person under twenty-one (21) years of age shall purchase or knowingly possess any alcoholic beverage.

3. No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under twenty-one (21) years of age.

4. No person under twenty-one (21) years of age shall misrepresent his age, identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.

(b) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually twenty-one (21) years of age or older, it shall be the duty of the person selling or otherwise furnishing such alcoholic beverage to request to see and to be furnished with proper identification in order to verify the age of such person; and the failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than twenty-one (21) years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.

(c) For purposes of this chapter, "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license or an identification card authorized under O.C.G.A. § 40-5-100 et seq. "Proper identification" shall not include a birth certificate.

(d) The prohibition contained in subsection (a) above shall not apply with respect to the sale, purchase or possession of alcoholic beverages for consumption:

1. For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state.

2. At a religious ceremony.
3. In the home of the minor with the consent of said minor's parent or legal guardian.

Sec. 6-4-117. Violations.

Any person violating any of the provisions of this chapter shall be punished as provided in section 1-1-7 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punished accordingly.

SECTION II.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV.

The Ordinance is enacted as an amendment to Chapter 6-4 of the Code of Ordinances of the City of Gainesville, Georgia.

SECTION V.

The effective date of this Ordinance shall be upon approval by the Governing Body of the City of Gainesville.

_____
C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____
Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/18/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-18**
Amend Chapter 6-2 entitled Occupation Tax
AN ORDINANCE TO AMEND CHAPTER 6-2 ENTITLED "OCCUPATION TAX" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW;TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

Approval of an amendment to the City's Occupational Tax (Business License) Ordinance and Regulations regarding the City staff that are identified as having a role or responsibility in the processing and enforcement.

History/Background:

Over the past few months, the City has been evaluating changes to its Ordinances related to Alcohol and Occupational Tax. These proposed changes to this Ordinance and three other related Ordinances are being present to ensure the City conforms with the new State Laws and at the same time realigns its resources to best meet the needs of the Business Community within the City of Gainesville.

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-18.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested: **Source of Funds**:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Ordinance 2017-18 Amend Chapter 6-2 Occupation Tax	Ordinance

First Reading: **08/01/2017**
Passed: _____

AN ORDINANCE

No. 2017-18

AN ORDINANCE TO AMEND CHAPTER 6-2 ENTITLED "OCCUPATION TAX" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW;TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I

Chapter 6-2 of the Code of the City of Gainesville, Georgia is hereby amended to read as follows:

Sec. 6-2-1. - Occupation tax required; occupation tax required for business dealings within the city.

For the year 1996 and succeeding years thereafter, each person engaged in any business, trade, profession or occupation in the City of Gainesville, Georgia, whether with a location in the City of Gainesville, or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for said business, trade, profession or occupation; which tax and any applicable certificate, except for practitioners of professions and occupations, shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the City of Gainesville, Georgia. If the taxpayer has no permanent business location in the City of Gainesville, Georgia, such business tax certificate shall be shown to a city code enforcement officer, the Business Services Manager, Chief Financial Officer or to any police officer of the City of Gainesville, Georgia upon their request.

Sec. 6-2-2. - Construction of terms; definitions.

(a) Wherever the term "City of Gainesville" is used herein, such term shall be construed to mean "Gainesville, Georgia"; wherever the term "city" is used herein, it shall be construed to mean "Gainesville, Georgia."
(b) As used in this chapter, the term:

Business means any person, corporation, partnership, or other legal entity which exerts substantial efforts within the city, engages in, causes to be engaged in, and/or represents or holds out to the public to be engaged in any occupation or activity with the object of gain or benefit, either directly or indirectly.

Business location or office shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site

which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. A temporary work site which serves multiple customers is included in this definition. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of the real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or the lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

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

Employee.

(1) Except as otherwise provided in subsection (2) of this definition, "employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

(2) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner which issues to such individual for purposes of documenting compensation a form I.R.S. W-2.

Engaged in business means doing or performing of any act of selling any goods or services, or soliciting business, or offering any goods or services for sale primarily in an attempt to make a profit, including selling or performing services of the character of a wholesaler or retailer, or being involved in any of the functions performed as a manufacturer, or renting real or personal property; all of the foregoing performed either as an owner, operator or agent of any business, trade, profession, or occupation within the city.

Manufacturing means a person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or commercial use any articles, substances or commodities, including, but not limited to, the following: materials upon which commercial activities have been applied, by hand or machinery, so that as a result thereof a new substance of trade or commerce is produced; the production or fabrication of special or custom-made articles; the making, fabrication, processing, refining, mixing, slaughtering, packing, aging, curing, preserving, canning, preparing and freezing of fresh foods, fruits, vegetables and meats.

Nonprofit organization means an organization which compiles with U.S. Internal Revenue Code 501-a.

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

Person wherever used in this chapter shall be held to include sole proprietors, corporations, partnerships or any other form of business organization.

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

Regulatory fees means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of the regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee or registration fee. The city is not authorized to require any administrative fee, registration fee, or fee by any other name in connection with a regulatory fee, except an occupation tax, as defined in the Code section. Regulatory fees do not include development impact fees and defined by paragraph (8) of O.C.G.A. § 36-71-2 or other costs or conditions of zoning or land development.

Retailer means a person who sells to consumers or any other person for any purpose, other than for resale, any tangible personal property.

Services means the accommodating or performing a duty or work by a person utilizing time or talents for direct or indirect remuneration.

Wholesaler means a person who sells to jobbers or to persons, other than consumers, any tangible personal property.

Sec. 6-2-3. - Regulatory fee structure.

A regulatory fee will only be imposed as provided under O.C.G.A. § 48-13-9 on those applicable businesses. A regulatory fee may not include an administrative fee.

Sec. 6-2-4. - Occupation tax levied; restrictions.

(a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one (1) or more locations or offices within the corporate limits of the city of and upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. § 48-13-7 based upon the following criteria:

(1) Number of full-time equivalent employees of the business or practitioner determined as follows:

By adding the total number of hours worked during the preceding calendar year by all employees and dividing that total by two thousand eighty (2,080) (forty (40) hours per week times fifty-two (52) weeks), and rounding the result to the nearest whole. (Five-tenths (0.5) or greater would be rounded up; less than five-tenths (0.5) would be rounded down.)

Employees whose total number of hours worked are not available (such as salaried employees) shall be calculated at a rate of forty (40) hours per week.

In businesses where it can be shown that calculation by this method would be impractical, an alternate method may be used which would provide an accurate count of full-time equivalent employees.

An employee whose hours total more than two thousand eighty (2,080) during a year, may be counted as having worked two thousand eighty (2,080) hours.

Any alternate method is subject to the approval of the Business Services Manager or Chief Financial Officer.

(2) For the purpose of calculating full-time equivalent employees, all employees, including owners, who actually perform work at the business shall be included.

(b) (1) The city shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have.

(2) The city shall not require an occupation tax on those employees that were taxed by occupation tax in other localities or states, provided that those businesses were taxed in full compliance with O.C.G.A. § 48-13-7 and § 48-13-14. Upon request by any city official, including but not limited to personnel of the Financial Services department, and building inspection department, the operator of a business shall be required to provide proof that the business was taxed pursuant to O.C.G.A. § 48-13-7 and § 48-13-14.

(3) An occupation tax shall not be levied in any other manner except as described in this section.

(c) Occupation tax schedule. The occupation tax levied shall be based on the following tax table:

Tax Table

Number of Employees	Tax Amount
0—1	$135.00
2—2	210.00
3—4	315.00
5—7	435.00
8—10	545.00
11—15	685.00
16—20	800.00
21—27	945.00
28—35	1,073.00
36—50	1,290.00
51—75	1,630.00
76—100	2,030.00
101—150	2,510.00
151—200	2,950.00
201—300	3,570.00
301—500	4,790.00
501—1,000	7,150.00
1,000+	9,950.00

Sec. 6-2-5. - Paying occupation tax of business with no location in Georgia.

For out-of-state businesses with no location in Georgia, occupation taxes apply to the employees of the business which are reasonably attributed to sales or services in the state. The assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no location or office in the state if the business' largest dollar volume of business in Georgia is in the city and the business or practitioner:

(1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the city for the purpose of soliciting business or serving customers or clients; or

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

Sec. 6-2-6. - Dominant line of business to be identified on business registration.

The business registration of each business operated in the city shall identify the dominant line of business that the business conducts. Except for practitioners of professions and occupations, no business shall conduct any line of business without first having that line of business registered with the Financial Services department and that line of business being noted by the Business Services Manager or Chief Financial Officer upon the occupation tax certificate form which is to be displayed by the business owner.

Sec. 6-2-7. - Number of businesses considered operating in city.

Where a person conducts business at more than one (1) store or place, each store or place shall be considered a separate business for the purpose of occupation tax.

Sec. 6-2-8. - Professionals as classified in O.C.G.A. § 48-13-9(c), paragraphs 1 through 18.

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

(1) For the year 1996 and subsequent years, one (1) of the following:

a. The occupation tax based on number of employees.
b. A fee of four hundred dollars ($400.00) per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location. The per practitioner fee shall include all persons in the business who qualify as a practitioner under the state's regulatory guidelines and framework.

Sec. 6-2-9. - Practitioners exclusively practicing for the government.

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, instrumentalities of the United States, the state or a municipality or county of the state, shall not be required to obtain a license or pay an occupation tax for that practice.

Sec. 6-2-10. - Purpose and scope of tax.

The tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade or calling. The occupation tax applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law ordinance. Payment of an occupation tax shall not be required as a precondition for the practice of professions and occupations as set out in O.C.G.A. § 48-13-9(c).

Sec. 6-2-11. - When tax due and payable; effect of transacting business when tax delinquent.

(a) Each such business or occupation tax shall be for the calendar year 1996 and succeeding calendar years thereafter unless otherwise specifically provided. Except for practitioners of law, said registration and occupation tax shall be payable January 15 of each year and shall be delinquent if not paid by April 15 of each year and shall be subject to penalties for delinquency as prescribed in this chapter. In the event that any person commences business on any date after January 15 in any year, the tax shall be due and payable thirty (30) days following commencement of the business.

(b) Except for practitioners of law, regulatory fees authorized by this chapter shall be paid before commencing business as a condition precedent for transacting business.

(c) Regulatory fees may be paid after commencing business when:

  (1) The work done or services provided are necessary for the health and safety of one (1) or more individuals; and
  (2) The work done or services provided have no adverse effect on any other person; and
  (3) Regulatory fees are tendered to the local government within two (2) business days after commencing business.

(d) The tax certificate herein provided for shall be issued by the Business Services Manager or Chief Financial Officer. Except for the practitioners of law, if any person, firm, or corporation whose duty it is to obtain a registration shall, after said registration or occupation tax become delinquent, transact, or offer to transact, in the city, any of the kind of profession, trade or calling in this chapter specified without having first obtained said registration and certificate, such person shall, in addition to remedies provided herein, be punished as provided in section 6-2-18 of this chapter.

(e) In addition to the above remedies, the Business Services Manager or Chief Financial Officer may proceed to collect delinquent business or occupation tax in the same manner as provided by law for tax executions.

(f) (1) Any occupation tax due by any practitioner of law pursuant to this chapter shall be due and payable within thirty (30) days of January 15 for the previous calendar year.

  (2) If a practitioner of law commences business in the city on or after July 1 in any year, the occupation tax for the remaining portion of the year shall be fifty (50) percent of the tax imposed for the entire year and shall be due and payable within thirty (30) days of January 15 for the previous calendar year.

Sec. 6-2-12. - Allocation of employees of businesses with multiple intra or interstate locations.

For those businesses who have multiple locations inside and outside of the city where the number of employees can be allocated to each location, the number of employees used to determine the occupational tax assessed will be those employees attributed to each city location. In the case where the number of employees attributed locally cannot be determined in those businesses with multiple locations, the total number of employees will be divided by the total number of locations in the city and elsewhere and allotted to those locations. Upon request, the business or practitioner with a location or office situated in more than one (1) jurisdiction shall provide to the city the following:

(1) Information necessary to allocate the number of employees of the business or practitioner; and
(2) Information relating to the allocation of the business' or practitioner's number of employees by other local governments.

Sec. 6-2-13. - Exemption on grounds that business operated for charitable purpose.

No business on which a business registration or occupation tax is levied by this chapter shall be exempt from said registration or tax on the ground that such business is operated for a charitable purpose, unless eighty (80) percent or more of the entire proceeds from said business are devoted to such purpose.

Sec. 6-2-14. - Evidence of state registration required if applicable; state registration to be displayed.

Each person who is licensed under Title 43 of the state license examining boards shall provide evidence of proper and current state licensure before the city registration may be issued.

Sec. 6-2-15. - Evidence of qualification required if applicable.

(a) Any business required to obtain health permits, bonds, certificate of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a city business registration, show evidence of such qualification.
(b) Any business required to submit an annual application for continuance of that business shall do so before the registration is issued.

Sec. 6-2-16. - Liability of officers and agents; registration required; failure to obtain.

(a) All persons subject to the occupation taxes provided in this chapter shall be required to take out the necessary registration and obtain the necessary tax certificate for said business prescribed in this chapter, and in default thereof the officer or agent soliciting for or representing such persons shall be subject to the same penalty as other persons who fail to obtain a certificate. Except for practitioners of professions and occupations, every person commencing business in the city after January 1 of each year shall likewise obtain the registration and obtain the tax certificate herein provided for before commencing the same; and any person transacting, or offer to transact in the city, any of the kinds of business, trade, profession or occupation without first having so obtained said registration, except for practitioners of professions and occupations, shall be subject to penalties provided herein and upon conviction, be punished as provided in section 6-1-18 of this chapter. In the case of practitioners of professions and occupations, if any person, firm, or corporation whose duty

it is to obtain a registration and an occupation tax certificate shall fail to pay such tax in a timely fashion, such offender shall be subject to penalties provided in O.C.G.A. § 48-13-21.

(b) It shall be unlawful for the owner, proprietor, manager, executive officer or employee of any business, coming within the provisions of this chapter, to make a false registration for such business, or to give or file, or direct the giving or filing, of any false information with respect to the occupation tax due under the provisions of this chapter or upon which any occupation tax due under the provisions of this chapter is based.

Sec. 6-2-17. - When registration and tax due and payable; effect of transacting business when tax delinquent.

(a) Each such registration shall be for the calendar year 1996 and each succeeding calendar year thereafter unless otherwise specifically provided. There is hereby imposed a penalty upon each business which fails to apply for and obtain an appropriate business registration and pay all tax and fees as provided herein before April 15 of each year, on the 16th day of April of each year thereafter. The penalty for failure to comply with this section shall be assessed in the amount of ten (10) percent of the occupational tax determined to be due and owning under the provisions of this chapter for the first thirty (30) days or fraction thereof of delinquency and an additional one and five-tenths (1.5) percent of the occupation tax for each additional month or fraction thereof of delinquency. Said penalties shall be in addition to all other civil penalties, herein provided; and may be collected by the remedies herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

(b) The registration certificate herein provided for shall be issued by the Business Services Manager or Chief Financial Officer and, except for practitioners of law, if any person, firm or corporation whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact, in the city, any of the kind of business or trade without having first obtained said registration, such offender shall be subject to the penalties provided thereof.

(c) In the case of practitioners of law, if any person, firm or corporation whose duty it is to obtain a registration and an occupation certificate, or shall fail to pay such tax when due, the penalty for failure to comply with this paragraph shall be assessed in the amount of ten (10) percent of the occupational tax determined to be due and owing under the provisions of this chapter for the first thirty (30) days or fraction thereof of delinquency and an additional one and five-tenths (1.5) percent of the occupation tax for each additional month or fraction thereof of delinquency. Said penalties shall be in addition to all other civil penalties, herein provided; and may be collected by the remedies herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

Sec. 6-2-18. - Penalty for chapter violation.

(a) In addition to the other remedies available to the city for the collection of special taxes, occupation taxes, and license regulatory fees due the city from persons subject to the tax fee who fail or refuse to pay the tax or fee, the Business Services Manager or Chief Financial Officer shall issue executions against the delinquent taxpayers for any or all of the following: the amount of the taxes or fees due when the taxes or fees become due; any penalty imposed by section 6-2-17(a) and (b); and any interest imposed by section 6-2-17(a) and (b), except for practitioners or professions and occupations, the municipal court may impose a civil fine for failure to pay the occupation tax or regulatory fee. Such a civil fine shall not exceed five

hundred dollars ($500.00) and may be enforced by the contempt power of the municipal court.

(b) Any person whose qualifications to practice their profession is determined by the general laws of the state and who fails to pay an occupation tax as provided in this chapter shall only be subject to the provisions of section 6-2-17(c) of this chapter.

Sec. 6-2-19. - Code Enforcement Officers; business inspector.

Code Enforcement Officers shall be classified as business inspectors with full subpoena and arresting powers in conjunction with any violation pertaining to the business tax ordinance for 1996 (this chapter) and succeeding years thereafter. The Business Services Manager or Chief Financial Officer shall administer and enforce the provisions of this chapter for the levy, assessment and collection and penalties imposed herein. In carrying out its responsibilities hereunder, the Business Services Manager or Chief Financial Officer shall have the following duties:

(1) To prepare and provide the necessary forms for registration of a business, and for the submission of required information as may be necessary to properly administer and enforce the provisions of this chapter.
(2) To issue to each person an occupation tax certificate within a reasonable time after the payment of the occupation tax assessed and levied in this chapter; provided, however, where under other ordinances of the city, permits, certifications, and compliance with the enumerated conditions are required for the operation of the business, the Business Services Manager or Chief Financial Officer shall not issue said certificate until the applicant exhibits to the Business Services Manager or Chief Financial Officer such obtained permits, certifications and compliances;
(3) To audit periodically, and when deemed necessary by the Business Services Manager or Chief Financial Officer, the books and records of the businesses subject to the provisions of this chapter, and to require the submission of such additional information as may be necessary in order to correctly determine the amount of the occupation tax due and to insure the collection of same; and
(4) The Business Services Manager or Chief Financial Officer shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this chapter or other laws of the city and the state or the constitution of this state for the administration and enforcement of the provisions of this chapter and the collection of the occupation tax and fees hereunder.

Sec. 6-2-20. - Businesses not covered by this chapter.

The following businesses are not covered by the provisions of this chapter but may be assessed an occupation tax or other type of tax or fee pursuant to the provisions of other general laws of the state or by act of local law.

(1) Those businesses regulated by the Georgia Public Service Commission.
(2) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia Annotated.
(3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.
(4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105.
(5) Insurance companies governed by O.C.G.A. § 33-8-8, and city Code Chapter 6-6-1 et seq.

(6) Motor common carriers governed by O.C.G.A. § 46-7-15.
(7) Those businesses governed by O.C.G.A. § 48-5-355.
(8) Agricultural products and livestock raised in the state governed by O.C.G.A. § 48-5-356.
(9) Disabled veterans and blind persons with proof of exemption under O.C.G.A. § 43-12-1.
(10) Depository financial institutions governed by O.C.G.A. § 48-6-93, and city Code Chapter 6-5-1 et seq.
(11) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55.
(12) Any state or local authority or nonprofit organization.
(13) Any person engaging in casual or isolated activity and commercial transactions, where such involve personal assets and are not an occupation for the individual.

a. In regard to yard/garage sales, this exemption shall apply to persons or nonprofit organizations conducting such sales at a private residence or at a commercial location with an occupancy permit and with permission of the property owner, not exceeding four (4) events per year.
b. In regard to the rental of personally owned residences, this exemption shall apply to persons renting a maximum of five (5) residences within the state.

The city may require any business claiming not to be covered by the provisions of this chapter to provide specific and detailed evidence showing such noncoverage.

Sec. 6-2-21. - Occupation tax inapplicable where prohibited by law or provided for pursuant to other existing law.

This occupation tax is not levied upon any part of a business where such levy is prohibited or exempted by the laws of Georgia or of the United States.

Sec. 6-2-22. - Occupation taxes levied on business to be transacted during calendar year; filing of returns showing number of employees during preceding calendar year.

(a) All occupation taxes levied by this chapter are levied on number of employees during the calendar year. However, for convenience of both the city and the taxpayer, those businesses subject to the occupation tax levied in sections 6-2-4 and 6-2-8 hereof shall, on or before the times hereinafter set forth, file with the Business Services Manager or Chief Financial Officer the returns hereinafter specifically provided for, showing the number of full-time equivalent employees of that business during the preceding calendar year.
(b) The owner, proprietor, manager or secretary officer of the business subject to said occupation tax for the current calendar year shall, at the end of the preceding year, and on or before April 15 of the current calendar year, file with the Financial Services department of the city, on a form furnished by the Business Services Manager or Chief Financial Officer, a signed return setting forth the number of full-time equivalent employees of such business for the preceding calendar year. The return calendar year 1996 shall include the number of full-time equivalent employees for calendar year 1995.
(c) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the number of full-time equivalent employees for such part shall be set forth in said return. Said return shall also show a figure putting the full-time equivalent employees for such part of a year on an annual basis, which figure shall bear the same ratio to the number of employees for such part year as the full year bears to such part. Said figure shall be used as the estimate of the number of full-time equivalent employees of the business for the current calendar year.

(d) If any person fails to make a return, the Business Services Manager or Chief Financial Officer may make an estimate of the number of full-time equivalent employees of the business. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is or may come into the possession of the Business Services Manager or Chief Financial Officer.

(1) The Business Services Manager or Chief Financial Officer, shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his/her address as it appears in the records of the Business Services Manager or Chief Financial Officer. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.

(2) The amount of the determination shall bear interest and penalty as required in Section 6-1-19.

Sec. 6-2-23. - Plan for economic development; prorated tax for persons sixty-five years of age or older conducting business from their homes with under ten thousand dollars annual gross income.

The city recognizes and encourages the fact that individuals within the city who have reached the age of sixty-five (65) wish to remain involved in the economy of the area without pursuing a full-time business or occupation. This involvement contributes to the economic development of the city, and as a means of encouraging this, the following plan for economic development shall apply:

Any person sixty-five (65) years of age or older conducting business from his/her home with under ten thousand dollars ($10,000.00) annual gross income may conduct such business by paying one-half (½) of the otherwise required business tax. Proof of qualification for this status must be provided to the Business Services Manager or Chief Financial Officer.

Sec. 6-2-24. - Payment of occupation tax by newly established businesses.

In the case of a business subject to occupation tax for a calendar year, which was not conducted for any period of time in the corporate limits of the city in the preceding year, the owner, proprietor, manager or executive officer of the business liable for occupation tax shall estimate the number of full-time-equivalent employees from commencing date to the end of the calendar year and such tax shall be paid as provided in Section 6-2-11. The estimate shall be, at a minimum, the number of full-time-equivalent employees which will be employed when the business begins operation.

Businesses beginning operation after July 1 of any calendar year shall pay a pro-rated business tax of fifty (50) percent of the tax which would be due on an annual basis.

Sec. 6-2-25. - More than one place of business.

Where a business is operated at more than one (1) place, the number of employees of each location will be entered on a separate occupation tax return on a form to be furnished by the city.

Sec. 6-2-26. - Reserved.

Sec. 6-2-27. - Returns confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent or clerk of the city or any other person to divulge or make known in any manner any information provided for the purpose of determining the amount of occupation tax required under this chapter. Such information shall be confidential and open only to the officials, employees, agents or clerks of the city using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be classed as "agents of the city." Nothing herein shall be construed to prohibit the publication by the city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof, or information such as name, location, ownership and line of business with no association made to number of employees or amount of tax paid, or the inspection of the records by duly qualified employees of the tax departments of the State of Georgia or of the United States, and other local governments. Information provided by a business or practitioner may be disclosed to the governing authority of another local government for tax purposes.

Sec. 6-2-28. - Inspection of books and records.

In any case the Business Services Manager or Chief Financial Officer, through his officers, agents, employees or representatives, may inspect the books of the business for which the returns are made. The Business Services Manager or the Chief Financial Officer or their designees shall have the right to inspect the books or records for the business of which the return was made in the city, and upon demand of the Business Services Manager, or Chief Financial Officer or their designees such books or records shall be submitted for inspection by a representative of the city within thirty (30) days. Failure of submission of such books or records within thirty (30) days shall be grounds for revocation of the tax certificate currently existing to do business in the city. In the case of practitioners of professions and occupations, the city shall be sensitive to the issues of client or customer confidentiality. In such cases, the practitioner may redact information claimed to be privileged before disclosing books or records of financial transactions. If such Practitioner alleges that redaction provides inadequate protection to the confidences of its clients or customers, such Practitioner may petition the Superior Court of Hall County for an in camera inspection, prior to examination by the Business Services Manager or Chief Financial Officer. Except for practitioners of professions and occupations electing to pay a flat fee in lieu of a per employee tax, adequate records shall be kept in Gainesville, Georgia, for examination by the Business Services Manager or Chief Financial Officer or their designees at their discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting, a penalty of ten (10) percent of the deficiency and an additional one (1) percent of the deficiency for each month or fraction thereof that the deficiency was due and unpaid shall be assessed.

Sec. 6-2-29. - Tax certificate to be revoked for failure to pay tax, file returns, permit inspection of books.

Except for a person whose qualifications to practice law are determined by the general laws of the state, the failure of any business to pay said occupation tax or any part thereof before it becomes delinquent or upon failure to permit inspection of its books as above provided, any business tax certificate granted by the city under this chapter permitting the owner of said business to do business in the city for the current year shall be, ipso facto, revoked. No new business tax certificate shall be granted by the city for the operation of a business for which any

part of the occupation tax herein provided for is at that time unpaid, or to a person who has failed to submit adequate records as requested by the Business Services Manager or Chief Financial Officer in accordance with provisions found in Section 6-2-22. In the case of practitioners of law, if any such person, firm, or corporation whose duty it is to obtain a registration and an occupation tax certificate shall fail to pay such tax in a timely fashion, such offender shall be subject to the penalties provided in section 6-2-17(c).

Sec. 6-2-30. - Effect of failure to comply with chapter provisions; continuing in business after tax certificate revocation.

Any persons, their manager, agent or employee, who does business in the city after the certificate for said business has been revoked as above; any person, their manager, agent or employee, who is hereby required to make returns showing the amount of full-time equivalent employees and who fail to make said returns within the time and in the manner herein provided, or refuse to amend such returns so as to set forth the correct information, or who shall make false returns, and except for practitioners of professions and occupations electing to pay a flat fee in lieu of a per employee tax, any person, their manager, agent or employee who refuses to permit an inspection of books in their charge when the officer(s), agent(s), employee(s) or representative(s) of the city request such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties provided in Section 6-2-18 of this chapter.

Sec. 6-2-31. - Execution for delinquent occupation tax.

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the Business Services Manager or Chief Financial Officer of the city, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the person liable for said tax, which execution shall bear interest at the rate of one and one-half (1.5) percent per month from the date when such tax or installment becomes delinquent, and the lien shall cover the property of the person liable for said tax, all as provided by the Ordinances and Charter of the City and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the Business Services Manager or Chief Financial Officer upon the property of the person liable for said tax, and sufficient property shall be advertised and sold the [to] pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by the Ordinances and the Charter of the City and the laws of Georgia and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the Charter of the City and the laws of Georgia in regard to tax executions. When a nulla bona entry has been entered by property authority upon an execution issued by the Business Services Manager or Chief Financial Officer against any person defaulting on the occupation tax, except for practitioners of professions and occupations, the person against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution issues pays the tax in full to other with all interest, penalties and costs accrued on the tax, the person may collect any fees and charges due the person as though the person had never defaulted in the payment of the taxes.

Sec. 6-2-32. - Amendment, repeal of provision.

This chapter shall be subject to amendment or repeal, in whole or in part, at any time and no such amendment or repeal shall be construed to deny the right of the council to assess and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the city of additional occupation taxes upon the same person, property or business.

Sec. 6-2-33. - Applications of provisions to prior ordinance.

This chapter does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in said ordinance or ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee or assessment shall be fully paid.

Sec. 6-2-34. - Enforcement of provision.

It is hereby made the duty of the Business Services Manager, Chief Financial Officer, Code Enforcement and the police department to see that the provisions of this chapter relating to occupation taxes are observed; and to summon all violators of the same to appear before the municipal court. It is hereby made the further duty of the Business Services Manager, Chief Financial Officer, Code Enforcement, the chief of police, their designees and assistants, to inspect all certificates issued by the city, as often as in their judgment it may seem necessary to determine whether the certificate held is the proper one for the business sought to be transacted thereunder.

Sec. 6-2-35. - Provisions to remain in full force and effect until changed by council.

This chapter shall remain in full force and effect until changed by amendment adopted by the council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

Sec. 6-2-36. - Requirement of public hearing.

In any year when revenue from occupation taxes is greater than the preceding year, the city shall hold a public hearing as a part of the process for determining how to use the additional revenue.

Sec. 6-2-37. - Option to establish exemption or reduction in occupation tax.

The city may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one (1) or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious.

Sec. 6-2-38. - Conflicts between specific and general provisions.

Where there is an apparent conflict in this chapter between specific and general provisions, it is the intention hereof that the specific shall control.

Sec. 6-2-39. - Reserved.

Sec. 6-2-40. - Occupation tax certificate not transferable.

An occupation tax certificate and/or regulatory fee certificate shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of such business and the establishment of a new business. Therefore, a new certificate shall be required for each new owner of the business.

Sec. 6-2-41. - Duty to keep information current.

Any person required by this chapter to register his or her business shall notify the Business Services Manager or Chief Financial Officer in writing within thirty (30) days of the following changes:

(1) Any change of address of the business, in which case the same occupation tax certificate shall be valid at the new location.
(2) Any change of ownership, in which case the transfer shall be treated as the termination of one (1) business and the establishment of a new business for the purposes of this chapter.
(3) The termination of any business.

Sec. 6-2-42. - Compliance with other ordinances and laws.

(a) All businesses are required to comply with the provisions of all ordinances of the city and other laws and the issuance of a occupation tax receipt to any business pursuant to this chapter shall not authorize that business to engage in or carry on business or to perform any other activity in violation of state or federal law or regulations and other ordinances of the city nor shall it relieve that business from obtaining any certificate or permit required by the provision of other laws or ordinances.
(b) No certificate shall be issued or renewed until any delinquent property taxes and other debts to the city have been paid.

Sec. 6-2-43. - Practitioners of professions and occupations.

It being the intention of the mayor and council that no portion of this taxation scheme shall be construed to be, or have the practical effect of, regulation of practitioners of professions and occupations and if any provision hereof shall be construed by a court of competent jurisdiction to be an unlawful regulation of such profession, then such provision shall be considered rescinded by the mayor and council as if such provision had not been adopted, and in such case, the remaining provisions of this chapter shall be applied to such practitioner.

SECTION II

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION III

If any portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV

The ordinance is enacted as an amendment to Chapter 6-2 of the Code of Ordinances of the City of Gainesville, Georgia.

SECTION V

The effective date of this ordinance shall be upon approval by the governing body of the City of Gainesville.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/18/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-19**
Amend Chapter 6-13 entitled Sidewalk Cafes
AN ORDINANCE TO AMEND CHAPTER 6-13 ENTITLED "SIDEWALK CAFES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

To propose an amendment to the City's Sidewalk Cafes Ordinance and Regulations regarding the definition of City staff that are identified as having a role or responsibility in the processing and enforcement.

History/Background:

Over the past few months, the City has been evaluating changes to its Ordinances related to Alcohol and Occupational Tax. These proposed changes to this Ordinance and three other related Ordinances are being present to ensure the City conforms with the new State Laws and at the same time realigns its resources to best meet the needs of the Business Community within the City of Gainesville.

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-19.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested: **Source of Funds**:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type

Ordinance 2017-19 Amend Chapter 6-13 entitled Sidewalk Cafes Ordinance

First Reading: **08/01/2017**
Passed: _____

AN ORDINANCE

No. 2017-19

AN ORDINANCE TO AMEND CHAPTER 6-13 ENTITLED "SIDEWALK CAFES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Chapter 6-13 of the Code of the City of Gainesville, Georgia is hereby amended to read as follows:

Sec. 6-13-1. - Definitions.

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

Sidewalk cafe means the location and use of tables and chairs and other associated equipment and furnishings on the public sidewalk or City installed and/or approved parklet and operated as an extension of a licensed eating establishment or licensed alcoholic beverage premises in the central business district.

Sec. 6-13-2. - Sidewalk cafes allowed in central business district; license required.

(a) Sidewalk cafes shall be allowed in the city zoning district known as the central business district subject to the provisions of this chapter.

(b) No person shall operate a sidewalk cafe without first obtaining a license from the city manager or designee.

(c) All applications for a license shall be submitted to the city manager or designee and shall contain the following information:

(1) A drawing depicting the location, size and number of tables and chairs at the proposed location of the sidewalk cafe, subject to the following:

a. A minimum of forty-eight (48) inches, clear and unobstructed, sidewalk space shall be maintained for pedestrian traffic at all times;

b. If a sidewalk has less than sixty (60) inches clear width, then passing spaces at least sixty (60) inches by sixty (60) inches shall be located at reasonable intervals not to exceed two hundred (200) feet along the sidewalk in order to ensure compliance with the Americans with Disabilities Act;

c. On the sidewalks of the downtown square: (1) Bradford Street between Spring Street and Washington Street; (2) Washington Street between Bradford Street and Main Street; and (3) Main Street between Washington Street and Spring Street, the tables and chairs shall be placed in such a manner so as to allow a clear and unobstructed forty-eight (48) inch wide path for pedestrian traffic at all times;

d. On the sidewalks in other areas of the central business district, the tables and chairs must be placed in the area nearest the building and allow a clear and unobstructed forty-eight (48) inch wide path for pedestrian traffic at all times; and

e. The area in which a sidewalk cafe is located shall not extend parallel in either direction beyond the outside walls of the building in which the restaurant is located.

(2) The name, location, description and mailing address of the business applying for the license.

(d) The applicant shall procure and shall maintain comprehensive general liability and broad form property damage insurance as shall protect applicant from claims for damages for bodily injury, including accidental death, as well as from claims for property damages, which may arise from operation of a sidewalk cafe by the applicant, whether such operations are by the applicant or by any subcontractor or by anyone directly or indirectly employed by either of them. The amount of insurance shall not be less than one million dollars ($1,000,000.00).

(e) The applicant shall provide a certificate of insurance acceptable to the city which shall be attached to each signed application when transmitted for final approval. The city shall be named as an additional insured on all coverages. The certificates of insurance, and any subsequent renewals, shall reference the license.

(f) The certificate of insurance shall contain a statement that "Coverages afforded under the policies will not be canceled unless at least thirty (30) days prior to cancellation written notice has been given to the city."

Sec. 6-13-3. - General regulations.

(a) A covered trash container with a minimum capacity of thirty-two (32) gallons, containing a disposable plastic liner, shall be provided within each sidewalk cafe area, and it shall be emptied as often as necessary to prevent overflow and other unsanitary conditions.

(b) Permit holders shall maintain sidewalk café areas and all equipment and furnishings in such conditions as to be clean, sanitary and safe at all times.

(c) Receptacles for disposal of cigarettes shall be provided for the use of customers of the sidewalk cafe.

(d) The number of patrons occupying the sidewalk cafe shall not be greater than the number of chairs at each table within the sidewalk cafe.

(e) All tables, chairs, trash containers, and other associated equipment or furnishings shall be removed from the public sidewalk area at the close of business every day.

Sec. 6-13-4. - Regulations pertaining specifically to businesses holding alcoholic beverage licenses.

(a) Those businesses holding alcoholic beverage licenses shall store all alcoholic beverages inside their principal building.

(b) If customers choose to purchase alcoholic beverages inside the business and take them outside to the sidewalk cafe portion of the restaurant, it shall be the responsibility of the license holder to ensure that alcoholic beverages laws and ordinances are complied with in the sidewalk cafe.

(c) Except as otherwise permitted by law, it shall be unlawful for any customer to leave the confines of the sidewalk cafe, except to enter the principal building containing the licensed establishment, with alcoholic beverages in such customer's possession.

(d) It shall be unlawful for the license holder or employees thereof to permit any person to leave the sidewalk cafe, except to enter the principal building containing the licensed establishment, with alcoholic beverages in such person's possession.

(e) The general regulations as set out in section 6-13-3 shall also apply to those restaurants holding alcoholic beverage licenses.

Sec. 6-13-5. - Revocation, suspension.

(a) Any violation of this chapter that may warrant revocation of a sidewalk cafe license shall be reported by any person to the city manager or designee who shall have the power, in his discretion, to suspend the license for a period not to exceed ten (10) days pending a hearing before the administrative hearing officer on the question of whether or not the license shall be revoked for cause.

(b) Upon a charge that there has been a violation of this chapter, the city manager or designee may order the use of the sidewalk cafe suspended, pending a hearing on the charge.

Before the denial of any application for a license or for the revocation of any existing sidewalk café license subject to the provisions of this chapter, the applicant or licensee, as the case may be, shall be given notice in writing from the city manager or designee to show cause before the administrative hearing officer at a time and place specified therein not less than three (3) days nor more than ten (10) days from the date of service of the notice, why such application for a license should not be denied, or why such license should not be revoked, as the case may be, stating the grounds therefor, and at the appointed time and place the applicant or licensee shall have an opportunity to show cause, if any exist, why such application should not be denied or such license revoked, after which the administrative hearing officer shall take such actions as he or she in his or her judgment and discretion, shall deem warranted under the facts. All decisions of the administrative hearing officer shall be in writing with reasons therefore stated and mailed or delivered to the applicant, licensee, or the person in charge of the place of business if the license holder cannot be located. In addition, at any hearing as provided herein, the party afforded the hearing shall have the opportunity to present evidence and cross-examine opposing witnesses.

(d) Any person aggrieved by the action or decision of the administrative hearing officer to deny an application for a license applied for under the provisions of this chapter or the revocation or suspension of a license, shall have the right of appeal by certiorari to the superior court of Hall County from the decision of the administrative hearing officer, as provided by law.

Sec. 6-13-6. - Penalty for violation.

Any person violating any of the provisions of this chapter shall be punished as provided in section 1-1-7 of this Code.

SECTION II.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV.

The Ordinance is enacted as an amendment to Chapter 6-13 of the Code of Ordinances of the City of Gainesville, Georgia.

SECTION V.

The effective date of this Ordinance shall be upon approval by the Governing Body of the City of Gainesville.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/18/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-20**
Amend Section 10-1-63 entitled Alcoholic Beverage Fees and Excise Taxes
AN ORDINANCE TO AMEND SECTION 10-1-63 ENTITLED "ALCOHOLIC BEVERAGE FEES AND EXCISE TAXES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

Approval of an Amendment to the City's Ordinance Title 10 entitled Schedule of Fees of the Code of Ordinances of the City of Gainesville, Georgia, which enables the City Council to set and update fees related to alcohol licensing by Resolution. The proposed revisions to section 10-1-63 establish this requirement.

History/Background:

Over the past few months, the City has been evaluating changes to its Ordinances related to Alcohol and Occupational Tax. These proposed changes to this Ordinance and three other related Ordinances are being present to ensure the City conforms with the new State Laws and at the same time realigns its resources to best meet the needs of the Business Community within the City of Gainesville.

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-20.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested: **Source of Funds**:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

	Description	Type
	Ordinance 2017-20 Amend Section 10-1-63 entitled Alcoholic Beverage Fees and Excise Taxes	Ordinance

First Reading: **08/01/2017**
Passed: _____

AN ORDINANCE

No. 2017-20

AN ORDINANCE TO AMEND SECTION 10-1-63 ENTITLED "ALCOHOLIC BEVERAGE FEES AND EXCISE TAXES" OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Section 10-1-63 of the Code of the City of Gainesville, Georgia is hereby amended to read as follows:

(a) The amounts imposed for alcoholic beverage annual fees will be set by Resolution of the governing body of the City of Gainesville.

(b) The amounts imposed for excise taxes in the city are as follows:

1. The malt beverage excise tax imposed pursuant to section 6-4-50 shall be in the following amounts:

   i. For malt beverages sold in or from a barrel or bulk container (commonly known as tap or draft beer) a tax of six dollars ($6.00) on each container sold containing not more than fifteen and one-half (15½) gallons and a proportionate tax on the same rate on all fractional parts of fifteen and one-half (15½) gallons.

   ii. For malt beverages sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents ($0.05) cents per twelve (12) ounces and a proportionate tax at the same rate of all fractional parts of twelve (12) ounces.

2. The wine excise tax imposed pursuant to section 6-4-50 shall be in the amount of twenty-two cents ($0.22) per liter and a proportionate tax at the same rate of all fractional parts of a liter.

3. The distilled spirits excise tax imposed pursuant to section 6-4-50 shall be in the amount of twenty-two cents ($0.22) per liter and a proportionate tax at the same rate of all fractional parts of a liter.

4. The distilled spirits excise tax imposed pursuant to section 6-4-32 (mixed drinks consumed on premises) shall be in the amount of three (3) percent of the purchase price of the beverage.

SECTION II.

All Ordinances and part of Ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV.

The Ordinance is enacted as amendment to Section 10-1-63 of the Code of Ordinances of the City of Gainesville, Georgia.

SECTION V.

The effective date of this Ordinance shall be upon approval by the Governing Body of the City of Gainesville.

_____
C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____
Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 8/4/2017

Presenter: Bryan Lackey

Item of Business: BR-2017-39 Establish Boundaries Related to Downtown Dining District

Meeting Date: 8/15/2017

Purpose of Request:

Approval of a resolution establishing the boundaries related to the new Downtown Dining District.

History/Background:

With the approval of the amendments to City's Code Section 6-4-87(f)1, the City Council of Gainesville is required to adopt a Resolution setting the area of the Downtown Dining District.

Facts & Issues for Consideration:

Department Recommendation:

Approval of the proposed resolution upon adoption of the amendments to City's Code Section 6-4 entitled Alcoholic Beverages.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
BR-2017-39 Establish Boundaries Related to Downtown Dining District	Resolution
Downtown Dining District Area	Attachments/Exhibits

RESOLUTION BR-2017-39

Establish Boundaries Related to Downtown Dining District

WHEREAS, Section 6-4-87(f)1 entitled Alcoholic Beverages of the Code of Ordinances of the City of Gainesville, Georgia states that the area of the Downtown Dining District will be set by resolution of the governing body for the City of Gainesville; and

WHEREAS, the governing body will from time to time, review all areas and make changes as needed; and

WHEREAS, the governing body has reviewed the area on the attached map.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby approves the area on the attached Downtown Dining District Map, of which this area shall be in effect until further resolution of the governing body.

Adopted this _____ day of _____, 2017.

_____

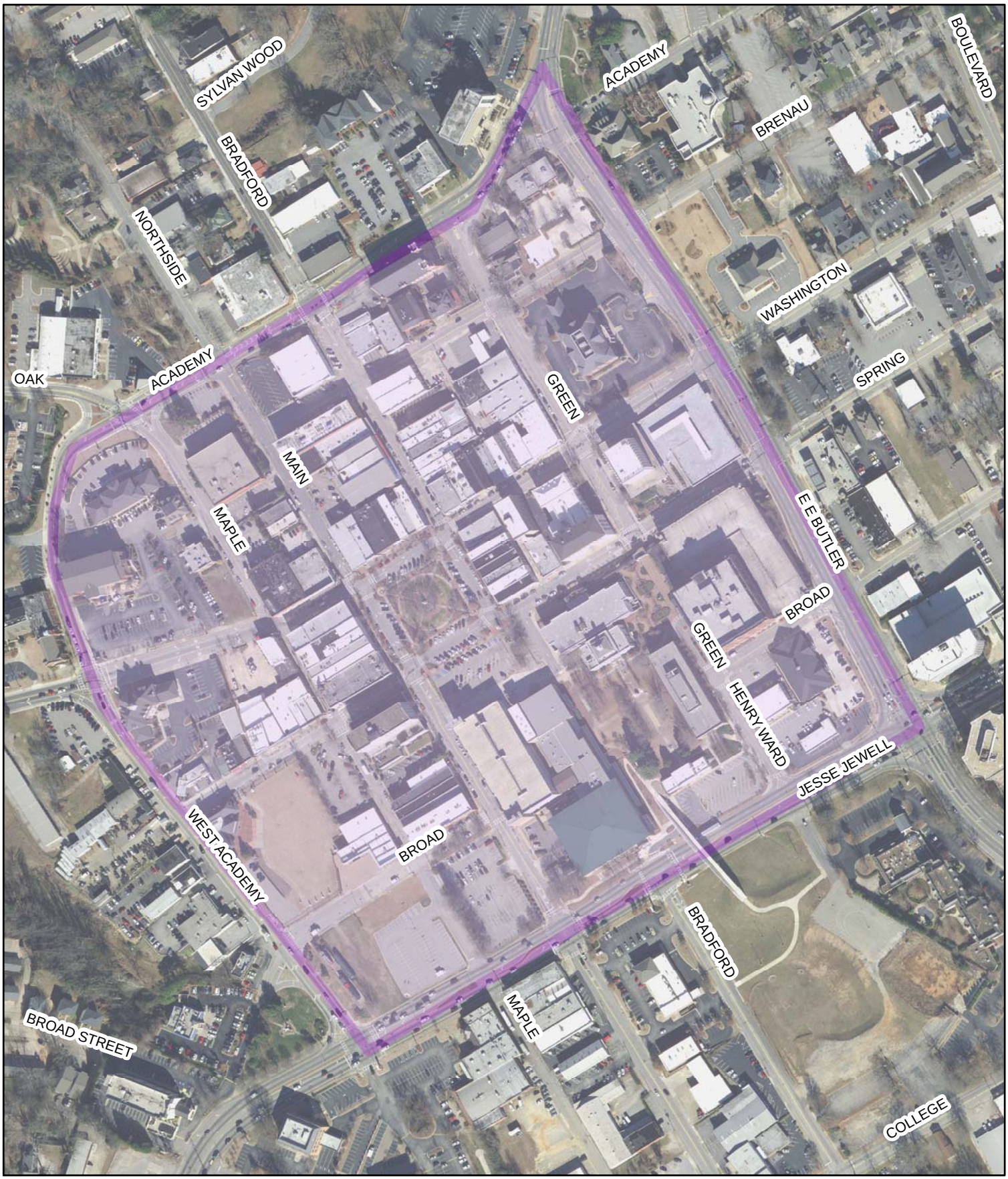
C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk



N

CITY OF GAINESVILLE
DOWNTOWN DINING DISTRICT

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/18/2017

Presenter: Bryan Lackey

Item of Business: BR-2017-40 Establish Fees Related to Alcohol Licensing

Meeting Date: 8/15/2017

Purpose of Request:

Approval of a resolution establishing the newly revised schedule of fees related to alcohol licensing.

History/Background:

With the approval of the amendments to City's Code Section 10-1-63 entitled Schedule of Fees, the City Council of Gainesville is required to adopt a Resolution setting the fees related to alcohol licensing.

The proposed resolution was presented and reviewed at the 7/27/17 Work Session.

Facts & Issues for Consideration:

Over the past few months, the City has been evaluating changes to its Ordinances related to Alcohol and Occupational Tax. These proposed changes to this Ordinance and three other related Ordinances are being present to ensure the City conforms with the new State Laws and at the same time realigns its resources to best meet the needs of the Business Community within the City of Gainesville.

Department Recommendation:

Approval of the proposed resolution to establish fees related to alcohol licensing upon adoption of the amendments to City's Code Section 10-1-63 entitled Schedule of Fees.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
BR-2017-40 Establishing Fees Related to Alcohol Licensing	Resolution

RESOLUTION BR-2017-40

Establish Fees Related to Alcohol Licensing

WHEREAS, Section 10-1-63(a) entitled Alcoholic Beverage Fees and Excise Taxes of the Code of Ordinances of the City of Gainesville, Georgia states that alcoholic beverage annual fees will be set by Resolution of the Governing Body of the City of Gainesville; and

WHEREAS, the Governing Body will from time to time, review all fees and make changes as needed; and

WHEREAS, the Governing Body has reviewed the fees on the attached schedule.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby approves the fees on the attached Alcoholic Beverage Annual Fee Schedule, which fees shall be in effect until further resolution of the governing body.

Adopted this _____ day of _____, 2017.

_____
C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____
Denise O. Jordan, City Clerk

ALCOHOLIC BEVERAGE ANNUAL FEE SCHEDULE

Revised 08/15/2017

Distilled Spirits (liquor)	
Manufacturer Only	$3,000
Importer	$100
Wholesale	$3,000
Package	$5,000
Pouring	$3,000
Pouring off premises at a catered function by the drink	$100
Malt Beverages	
Manufacturer Only	$3,000
Importer	$100
Wholesale	$100
Package	$700
Pouring	$700
Pouring off premises at a catered function by the drink	$50
Wine	
Manufacturer Only	$3,000
Importer	$100
Wholesale	$100
Package	$700
Pouring	$700
Pouring off premises at a catered function by the drink	$50
Georgia Farm Winery Tasting Room	$1,400
Brewpub	
With distilled spirits	$4,400
Without distilled spirits	$1,400
Brewery	
Brewery	$3,700
Modifications to License	
Change of a managing agent of a licensee (6-4-8(b)	$100
Change of a registered agent of a licensee (6-4-7(d))	$25
Change of location pursuant (6-4-8(c))	$500
Special Events	
Special temporary event permit (6-4-100 or 6-4-101)	$25 per permit
Temporary limited license (6-4-102)	$25 per permit
Wine tasting (6-4-104)	$25 per wine tasting event
Home brew special event (6-4-105)	$25 per event
Employee Permits	
Employee Permits (6-4-12 (d))	$20

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/14/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-21**
Annex 6.32± at 0 White Sulphur Road
AN ORDINANCE ANNEXING A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD); ADJACENT TO BUT NOT NOW WITHIN THE CORPORATE LIMITS OF THE CITY OF GAINESVILLE, GEORGIA; REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

The applicant is proposing to annex the subject property into the city limits of Gainesville with a zoning of General Business (G-B). The property is currently zoned Agricultural Residential-III (AR-III) and Highway Business (H-B) within unincorporated Hall County and is adjacent to the city limits to the south and west. The applicant intends to utilize water and sewer services for future restaurant and retail purposes. The conceptual plan proposes a 3,500 square foot Fazoli's restaurant, 4,800 square foot restaurant and a 7,000 square foot retail building. Access is proposed from White Sulphur Road, directly across from the rear entrance to the New Holland Market Place. The property is undeveloped, heavily wooded and abuts railroad right-of-way to the east. Adjacent uses include the New Haven Church to the north, single-family homes to the east, and various retail and restaurant uses within the New Holland Market Place to the south and west.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-21.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

Amount Requested: **Source of Funds**:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Ordinance 2017-21 Keel Property Management, LLC	Ordinance

First Reading: **08/01/2017**
Passed: _____

AN ORDINANCE

No. 2017-21

AN ORDINANCE ANNEXING A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD); ADJACENT TO BUT NOT NOW WITHIN THE CORPORATE LIMITS OF THE CITY OF GAINESVILLE, GEORGIA; REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(Amendment to City Limit Boundary)

WHEREAS, a 6.32± acres tract located on the northeast side of the intersection of Jesse Jewell Parkway and White Sulphur Road (a/k/a **0 White Sulphur Road**), lies within the unincorporated lands of Hall County and adjoins the existing corporate limits of the City of Gainesville; and

WHEREAS, the hereinafter described lands be incorporated and annexed into the City of Gainesville.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

That from and after the passage of this Ordinance the following described lands are and shall be annexed into the existing corporate limits of the City of Gainesville, Georgia, so that said lands shall constitute a part of the land within the corporate limits of the City of Gainesville, Georgia, as fully and completely as if the limits had been so defined by the General Assembly of Georgia.

Legal Description

All that certain piece, parcel or tract of land located in Hall County, Georgia, containing approximately 6.32 acres and shown on a Composite Map Prepared for the Property of Deering Milliken, Incorporated, New Holland Mill, with a last revision date of November 19, 2002 and described as follows:

Beginning at an iron pin located in the eastern right of way of White Sulphur Road at its intersection with Jesse Jewell Parkway and running thence along a curve having a radius of 641.21 feet; an arc length of 616.47 feet; and a chord bearing and distance of N 05-05-56 E 593.00 feet to an iron pin; thence continuing along said right of way, N 32-38-30 E 337.13 feet to a iron pin located in the western right of way of Southern Railroad; thence along said right of way along a curve having a radius of 791.20 feet; an arc length of 352.82 feet; and a chord bearing and distance of N 19-52-00 349.91 feet to an iron pin; thence along the railroad right of way along a curve having a radius of 2239.09 feet; an arc length of 730.05 feet; and a chord bearing and distance of S 01-25-30 W 726.82 feet; thence continuing along said right of way S

11-30-00 W 467.64 feet to a iron pin located in the northern right of way of Jesse Jewell Parkway where it dead ends with the railroad; thence along the northern right of way of Jesse Jewell Parkway the following three courses and distances: S 71-02-58 W 68.14 feet to an iron pin; thence along a curve having a radius of 1507.70 feet; an arc length of 85.44 feet; and a chord bearing and distance of S 69-25-32 W 85.47 feet; thence N 71-08-28 W 103.26 feet to the Point of Beginning.

The annexation is to include all that portion of right-of-way known as Jesse Jewell Parkway and White Sulphur Road located between the subject property and the existing city limits of Gainesville.

SECTION II.

The Secretary to the City Council of the City of Gainesville is directed to make and file with the Department of Community Affairs of the State of Georgia a certified copy of this Ordinance together with a plat describing lands annexed to the City of Gainesville by this Ordinance.

SECTION III.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION IV.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION V.

The effective date of this Ordinance shall be upon approval by the governing authority of the City of Gainesville, Georgia.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/14/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-22**
Zone 6.32± at 0 White Sulphur Road
AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA BY ESTABLISHING THE ZONING ON A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD) AT THE TIME OF ANNEXATION AS GENERAL BUSINESS, WITH CONDITIONS (G-B-c); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

The applicant is proposing to annex the subject property into the city limits of Gainesville with a zoning of General Business (G-B). The property is currently zoned Agricultural Residential-III (AR-III) and Highway Business (H-B) within unincorporated Hall County and is adjacent to the city limits to the south and west. The applicant intends to utilize water and sewer services for future restaurant and retail purposes. The conceptual plan proposes a 3,500 square foot Fazoli's restaurant, 4,800 square foot restaurant and a 7,000 square foot retail building. Access is proposed from White Sulphur Road, directly across from the rear entrance to the New Holland Market Place. The property is undeveloped, heavily wooded and abuts railroad right-of-way to the east. Adjacent uses include the New Haven Church to the north, single-family homes to the east, and various retail and restaurant uses within the New Holland Market Place to the south and west.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-22.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
2nd Reading: Ordinance 2017-22 Keel Property Management, LLC	Ordinance

First Reading: 08/01/2017
Passed: _____

AN ORDINANCE

No. 2017-22

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA BY ESTABLISHING THE ZONING ON A 6.32± ACRES TRACT LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF JESSE JEWELL PARKWAY AND WHITE SULPHUR ROAD (A/K/A 0 WHITE SULPHUR ROAD) AT THE TIME OF ANNEXATION AS GENERAL BUSINESS, WITH CONDITIONS (G-B-c); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(Amendment to Zoning Map)

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

That from and after the passage of this Ordinance the following described lands shall be zoned and so designated on the Zoning Map of the City of Gainesville as **General Business, with conditions (G-B-c)**:

Conditions

1. **Prohibited commercial uses shall include motels or hotels with rooms accessed from the exterior of the building, adult novelty stores, adult entertainment centers, pawn shops, gas stations, tire stores, massage parlors except for practitioners licensed by the State of Georgia, vaping stores, auto body shops, automobile sale establishments, marine sales or repair stores, non-automated car wash, coin-laundry facilities, truck stop, climate controlled and non-climate controlled mini-warehouses or storage facilities, tattoo parlors, psychics, fortune tellers, clairvoyants and the like.**
2. **The exterior of the buildings shall be constructed with brick, stone or masonry finish on all sides visible from a public street and will comply with the Limestone Parkway Overlay Zone standards and Architectural Design Guidelines stated within the Gainesville Unified Land Development Code. The final design shall be subject to the Community Development Department Director approval.**
3. **The proposed development shall be limited to one free standing sign per lot. Each sign shall be limited to a maximum height of 10-feet, maximum sign face area of 50 square feet, maximum sign structure area of 96 square feet with internal or indirect lighting. No electronic changeable copy signs shall be permitted. The purpose of these sign standards is to provide for consistency with the adjacent New Holland Market development.**

4. **Prior to a permit being issued, the developer shall provide a traffic study and coordinate with the Georgia Department of Transportation (GDOT) Traffic Division to determine the traffic development impacts on the intersection of SR 369 / Jesse Jewell Parkway and White Sulphur Road and to determine whether the existing turn lanes will accommodate the future traffic generated by the development.**
5. **All access point design for the subject property shall require approval by the Georgia Department of Transportation in conjunction with the Gainesville Public Works Director. All required access / traffic / sidewalk improvements associated with the proposed development shall be at the full expense of the developer / property owner.**
6. **The location of the proposed automated car wash facility shall be located on Lot 2 or Lot 3 as shown on the concept plan submitted with the annexation application.**
7. **The proposed lot containing the automated car wash shall have a minimum twenty-foot (20') wide frontage landscape buffer along White Sulphur Road. The number, location, spacing, size and type of trees planted shall be subject to Community Development Department Director approval.**

Legal Description

All that certain piece, parcel or tract of land located in Hall County, Georgia, containing approximately 6.32 acres and shown on a Composite Map Prepared for the Property of Deering Milliken, Incorporated, New Holland Mill, with a last revision date of November 19, 2002 and described as follows:

Beginning at an iron pin located in the eastern right of way of White Sulphur Road at its intersection with Jesse Jewell Parkway and running thence along a curve having a radius of 641.21 feet; an arc length of 616.47 feet; and a chord bearing and distance of N 05-05-56 E 593.00 feet to an iron pin; thence continuing along said right of way, N 32-38-30 E 337.13 feet to a iron pin located in the western right of way of Southern Railroad; thence along said right of way along a curve having a radius of 791.20 feet; an arc length of 352.82 feet; and a chord bearing and distance of N 19-52-00 349.91 feet to an iron pin; thence along the railroad right of way along a curve having a radius of 2239.09 feet; an arc length of 730.05 feet; and a chord bearing and distance of S 01-25-30 W 726.82 feet; thence continuing along said right of way S 11-30-00 W 467.64 feet to a iron pin located in the northern right of way of Jesse Jewell Parkway where it dead ends with the railroad; thence along the northern right of way of Jesse Jewell Parkway the following three courses and distances: S 71-02-58 W 68.14 feet to an iron pin; thence along a curve having a radius of 1507.70 feet; an arc length of 85.44 feet; and a chord bearing and distance of S 69-25-32 W 85.47 feet; thence N 71-08-28 W 103.26 feet to the Point of Beginning.

The annexation is to include all that portion of right-of-way known as Jesse Jewell Parkway and White Sulphur Road located between the subject property and the existing city limits of Gainesville.

SECTION II.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV.

This Ordinance is enacted as an amendment to the Code of the City of Gainesville, Georgia, and is to be codified as a part of Section 9-1-1-5.

SECTION V.

The effective date of this Ordinance shall be upon approval by the governing authority of the City of Gainesville, Georgia.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

COUNCIL AGENDA REQUEST

Date Submitted: 7/14/2017

Presenter: Danny Dunagan

Item of Business: **Second Reading: Ordinance No. 2017-23**
Rezone 0.308± acres at 523 Park Street
AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA, BY CHANGING THE ZONING ON A 0.308± ACRE TRACT LOCATED ON THE NORTH SIDE OF PARK STREET AND NORTHEAST OF THE INTERSECTION OF PARK STREET AND BOULEVARD (A/K/A 523 PARK STREET) FROM RESIDENTIAL-II (R-II) TO RESIDENTIAL-I (R-I); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Meeting Date: 8/15/2017

Purpose of Request:

The applicant is proposing to rezone the subject property for the existing single-family use. The applicant intends to keep the property as single-family. The request would effectively downzone the property so that any future non-single-family uses would be required to provide a buffer adjacent to the subject property. The subject property contains a one-story, single-family home and a detached building. The property has road frontage along Park Street. The surrounding uses include single-family homes, multi-family apartments, professional offices and Brenau University.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

To hold second reading on Ordinance 2017-23.

Department Director:

Rusty Ligon

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
Ordinance 2017-23 Rezone 0.308± acres at 523 Park Street	Ordinance

First Reading: **08/01/2017**
Passed: _____

AN ORDINANCE

No. 2017-23

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA, BY CHANGING THE ZONING ON A 0.308± ACRE TRACT LOCATED ON THE NORTH SIDE OF PARK STREET AND NORTHEAST OF THE INTERSECTION OF PARK STREET AND BOULEVARD (A/K/A 523 PARK STREET) FROM RESIDENTIAL-II (R-II) TO RESIDENTIAL-I (R-I); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

(Amendment to Zoning Map)

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

That from and after the passage of this Ordinance the following described lands shall be zoned and so designated on the Zoning Map of the City of Gainesville as **Residential-I (R-I).**

Legal Description

All that tract or parcel of land lying and being in the City of Gainesville, Hall County, Georgia, being more particularly described as follows:

BEGINNING at corner fence on the line at Cliff Porter (formerly W.E. Hosch) lot on North side of Park Street, and running thence Easterly along Park Street 69 feet to line of H.L Gaines (Formerly R.O. Smith) lot; thence in a northerly direction along Gaines line to corner of fence; thence north along said fence/line 143 feet, more or less, to line of C.R. Frierson (formerly W.A. Mitchell); thence west along C.R. Frierson's line 60 feet to line of Frank Rogers (Formerly A.D. White) lot; and thence Southerly along said Rogers line and Porter 210 feet, more or less, to beginning corner on Park Street.

Said property currently being known as 523 Park Street, Gainesville, Georgia, according to the present system of numbering of Hall County, Georgia, and being known as Map and Parcel No. 01038 003015 according to the Hall County Tax Assessor's office.

Being the same property conveyed from C.T. Tanner and Mrs. C.R. Frierson to Will D. Strickland by deed dated November 12, 1940, recorded in Deed Book 85, page 235 Hall County, Georgia real estate records.

Being the same property conveyed from Will D. Strickland to H.A. Kelley and Mrs. Alberta Kelley dated September 4, 1952, recorded in Deed Book 136, Page 444, Hall County, Georgia real estate records.

Being the same property conveyed from Mrs. Alberta Mashburn Kelley, individually and as Executrix of the Last Will and Testament of Hiram Ansel Kelley, Deceased, to Robert Moore

and Lucy Moore by Warranty Deed dated June of 1974, recorded in Deed Book 549, Page 448, Hall County, Georgia real estate records.

Said Property being the same property conveyed from Karen Sewell Moore Moore to William S. Crumley and McCay D. Mercer by Warranty Deed dated June of 2014.

SECTION II.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV.

This Ordinance is enacted as an amendment to the Code of the City of Gainesville, Georgia, and is to be codified as a part of Section 9-1-1-5.

SECTION V.

The effective date of this Ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

_____

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

_____

Denise O. Jordan, City Clerk