

Code of Ordinances

Lexington, Georgia

December 2002 with amendments through January 2012



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MUNICIPAL CHARTER

MUNICIPAL CHARTER

Article I. CHARTER, CITY LIMITS AND CORPORATE POWERS

1. **Act to Constitute Charter.** This Act shall constitute the entire charter of the City of Lexington, Georgia, repealing and replacing, except as provided in section 1.02, the charter as provided by an Act approved December 13, 1899 (Ga. L. 1899, p. 239), as amended. The City of Lexington, Georgia, in the County of Oglethorpe, and the inhabitants thereof, shall continue to be a body corporate and politic under the name and style, "City of Lexington, Georgia", and by that name shall have perpetual succession, may contract and be contracted with, may sue and be sued, plead and be impleaded, in all courts of law and equity, and in all actions whatsoever, and may have and use a common seal and change it at pleasure. *(Ga. L. 1973, p. 2779)*
2. **Corporate Limits.** The corporate limits of the City of Lexington, Georgia, shall be the territory now embraced in and known, and heretofore incorporated in the town of Lexington. *(Ga. L. 1973, p. 2779)*
3. **Corporate Powers.** The corporate powers of the city, to be exercised by the Mayor and Council, shall include the following:
 - A. To levy and to provide for the assessment, valuation, revaluation and collection of taxes on all property subject to taxation.
 - B. To levy and to provide for the collection of license fees and taxes on privileges, occupations, trades and professions.
 - C. To appropriate and borrow money to provide for payment of the debts of the city; to authorize the expenditure of money for any municipal purpose, or for the matters of national or state interest; and to issue bonds for the purpose of raising revenue to carry out any project, program or venture authorized under this charter or the general laws of the State. Such bonding authority shall be exercised in accordance with the laws of governing bonds issued by municipalities in effect at the time said issue is undertaken
 - D. To acquire, dispose of, and hold in trust or otherwise, any real personal or mixed property, inside or outside the corporate boundaries of the city.
 - E. To condemn property, inside or outside the corporate boundaries of the city, for present or future use, and for any corporate purpose deemed necessary by the Mayor and Council, under section 36-202 of the Code of Georgia, 1933, or under other applicable public acts.
 - F. To acquire, construct, operate, distribute, sell and dispose of public utilities, including but not limited to a waterworks system, sewerage system, a natural gas system, electrical power system, and a community antenna televisions system, both inside and outside the corporate limits, subject to the provisions of applicable general law. For water, gas and electricity furnished, and for all sewerage and sanitary service rendered, said city may prescribe the charges, rates, fares, fees, regulations and standards and conditions of service to be provided and shall have a lien against any property of the persons served; said lien to be enforceable in the same manner and with the same remedies as a lien for city property taxes.
 - G. To grant franchises or make contracts for public utilities and public services including but not limited to those stated above, not to exceed periods of twenty years. The Mayor and Council may prescribe the rates, fares, regulations and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with such regulations by the Public Service Commission.
 - H. To provide for the acquisition, construction, building, operation and maintenance of public ways, parks, public grounds, cemeteries, markets, and market houses, public buildings, libraries, sewers, drains, sewerage treatment, airports, hospitals, and charitable education, recreational, conservation, sport, curative, corrective, detentional penal and medical institutions, agencies and facilities; and any other public improvements, inside or outside the corporate limits of the city; and to regulate the use thereof, and for such purposes, property may be acquired by condemnation under section 36-202 of the Code of Georgia, 1933, or other applicable public acts, or under any power or procedure of eminent domain now or hereafter provided by the General Assembly of Georgia.
 - I. To prescribe standards of health and sanitation and to provide for the enforcement of such

standards.

- J. To provide for the collection and disposal of garbage, rubbish and refuse and to provide all power and authority to exercise all necessary and proper means to keep the city limits free from garbage, trash, and filth. Charges or fees may be imposed to cover the costs of such services which, if unpaid, shall constitute a debt which shall be subject to a lien against any property of persons served, which lien shall be enforceable in the same manner, and under the same remedies, as a lien for city property taxes.
- K. To define, regulate and prohibit any act, practice, conduct or use of property which is detrimental, or likely to be detrimental, to the health, morals, safety, security, peace, convenience or general welfare of inhabitants of the city.
- L. To define a nuisance in the city and to provide for its abatement. The recorder of the city shall have jurisdiction of all nuisance abatement proceedings in the city. The Mayor and Council may provide by ordinance for any building, structure, or condition maintained in violation of any valid law of this State or any valid law of this State or any valid ordinance of the city, to be adjudged a nuisance and for its abatement at the owner's expense upon his failure or refusal to abate the same within ten days after written notice and hearing from the city to do so, said expense to be a lien upon the property for which execution may issue as for property taxes.
- M. To establish minimum standards for, and to regulate building construction and repair, electrical wiring and equipment, gas installation and equipment, plumbing, and housing for the health, sanitation, cleanliness, welfare and safety of inhabitants of the city and to provide for the enforcement of such standards; to establish fire prevention standards and the enforcement of such standards.
- N. To provide that persons given jail sentences in the recorder's court shall work out such sentences in any public works or on the public streets of the city as provided by ordinances; or the Mayor and Council may provide for the commitment of city prisoners to any county works camp, or jail, or to any other government agency, by agreement with the appropriate county officers or any other government agencies.
- O. To regulate and license, or prohibit, the keeping or running at large of animals and fowl and to provide for the impoundment of same, in violation of any ordinance or lawful orders; also to provide for their disposition, by sale, gift, or humane destruction, when not redeemed as provided by ordinance; to provide punishment for violation of ordinances enacted hereunder.
- P. To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in amounts prescribed by ordinance; and to regulate and rent parking spaces in public ways for the use of such vehicles.
- Q. To levy and provide for the collection of special assessments to cover the costs for any public improvements.
- R. To provide that upon the conviction of the violation of any ordinance, rule, regulation or order such person shall be punished as provided by ordinance but not exceeding the limitations prescribed by this charter.
- S. To exercise and enjoy all other powers, functions, rights, privileges and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the city and its inhabitants; to exercise all implied powers necessary to carry into execution all powers granted in this charter, as fully and completely as if such powers were fully enumerated herein; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under the Constitution or general laws of the State of Georgia. No enumeration of particular powers in this Act shall be held to be exclusive of others, nor restrictive of general words and phrases granting powers, but shall held to be in addition to such powers unless expressly prohibited to cities under the Constitution or applicable public acts.
- T. To levy taxes and to make appropriations for the purpose of advertising said city, its advantages and resources, so as to bring new capital, commercial, manufacturing and other enterprises into the city, and to also levy taxes and to make payment from the general revenues and funds of the city for the support of public hospitals and libraries.
- U. To regulate and control public streets, public alleys and ways; and to in the discretion of the

- Mayor and Council by ordinance alter, open or close public streets and public alleys and ways.
- V. To regulate land use by the adoption of zoning ordinances, planning ordinances, and other regulatory ordinances; and said ordinances may be adopted pursuant to any general or special public act existing at the time of adoption.
 - W. To engage the necessary personnel to administer and enforce ordinances, rules, and regulations adopted by the Mayor and Council. (*Ga. L. 1973, p. 2779*)
4. **Ordinances.** All ordinances, bylaws, rules and regulations, now in force in said city, not inconsistent with this Act, are hereby declared valid and of force until amended or repealed by the Mayor and Council of said city. (*Ga. L. 1973, p. 2779*)

Article II. CITY GOVERNMENT

1. **Establishment of City Government.** The corporate governmental powers of the City of Lexington shall be vested in a Mayor and five councilmen, who shall exercise their powers in such manner as prescribed by this charter, the Constitution and applicable laws of the State of Georgia, the Constitution and applicable laws of the State of Georgia. Or if not so prescribed, in such manner as prescribed by the duly established ordinances of the City of Lexington. (*Ga. L. 1973, p. 2779*)
2. **Qualifications for Mayor and Councilmen.** To be eligible for the office of Mayor or councilman, elected or appointed, a person must be at least twenty-one years of age, must meet the requirements of a qualified elector for members of the General Assembly, as prescribed by State law, must be a registered voter in the City of Lexington and must be a bona fide resident of the City of Lexington for one year next preceding the time of the holding of the election in which he offers as a candidate. (*Ga. L. 1973, p. 2779*)
3. **Election for Mayor and Councilmembers.**
- A. Those persons presently elected to office shall continue to serve until their successors are duly elected and qualified as provided by law.
 - B. Beginning in 1995 and continuing thereafter, an election shall be held once every two years in said city at such place or places as may be designated by the Mayor and Council on the Tuesday next following the first Monday in November.
 - C. The Mayor and Councilmembers of the City of Lexington shall be elected by vote of the entire city. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1984, p. 3937, Ga. L. 1995, p. 3542*)
4. **Terms of Office.** The terms of office for Mayor and Councilmembers shall begin on the first day of January of the year next succeeding their election and shall continue for two years and until their successors are elected and qualified. The Mayor and Councilmembers shall be installed in office by taking and subscribing to the following oath:
- 'I do solemnly swear that I will faithfully discharge the duties devolved upon me as Mayor or councilmember (as the case may be) of the City of Lexington; that I will faithfully execute and enforce the laws of said city to the best of my ability, skill, and knowledge; and that I will do all in my power to promote the general welfare of the inhabitants of said city and common interest thereof.'*
- The Mayor Elect and Councilmembers elect shall be installed in office on the first day of January. If the first day of January should fall on Sunday, or if any such officer shall fail to be installed on that day, such installation shall take place as soon thereafter as practicable. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1984, p. 3937, Ga. L. 1995, p. 3542*)
5. **Council.** The Council shall hold regular public meetings at a stated time and place as provided by ordinance. The Mayor and Council of said city shall have full power to fix the time, place and rules of procedure of their regular sessions. The Mayor, or the Mayor pro tem. And two councilmen, shall have the power to establish rules of procedure of their special sessions. The Mayor, or the Mayor pro tem. and two councilmen shall have power to convene the council in special session whenever it is deemed proper. The Mayor and Council shall have the power to establish rules of procedure of their special sessions. The Mayor and Council shall have full and ample power to do and perform any of their duties or powers at a special or called session as at a regular session. The council may, by ordinance, adopt rules and bylaws to govern the conduct of its business, including procedures and penalties for compelling the attendance of absent members. The council may provide by ordinance for punishment for contemptuous behavior conducted in the presence of the council. A majority of the council shall constitute a quorum. (*Ga. L. 1973, p. 2779*)

6. **Mayor as Presiding Officer; Mayor's Vote; Veto Power.**
 - A. The Mayor shall preside at meetings of the city council; he shall not be allowed to vote except in the following instances:
 - (1) In the case of a tie vote by the council on any question or measure;
 - (2) In all elections by the Mayor and Council of the subordinate officers of said city, and members of boards, authorities and commissions elected by the Mayor and Council, even though his vote results in a tie vote and the failure to elect any such officer and member. Where the Mayor's vote in the election of a subordinate officer or member causes a tie vote and results in a failure to elect any such officer or member. What the Mayor's vote in the election of a subordinate officer or member causes a tie vote and results in a failure to elect any person to such office, said Mayor shall have the power to appoint some competent person to fill such office until such time as the Mayor and Council shall by a majority vote elect some person to fill such office.
 - B. Said Mayor shall have veto power and the Mayor shall have five days after meetings of the council in which to file with the clerk in writing his dissent, but the council may, at the same meeting or at any subsequent meeting within thirty days, pass any such ordinances, order or resolution notwithstanding the veto by a vote of at least three councilmen on a ye and nay vote duly recorded in the minutes.
 - C. Further, said Mayor shall be the ceremonial head of the city; shall sign ordinances and resolutions on their final passage; may obtain short term loans in the name of the city when authorized by the council to do so; shall sign deeds, bonds and contracts when authorized by the council to do so; and shall perform any such other duties imposed by this charter and by duly adopted ordinances. (*Ga. L. 1973, p. 2779*)
7. **Mayor Pro Tem.** The Mayor and Council, annually at their first meeting in January, shall elect one of said councilmen as Mayor pro tempore, who shall, in the absence, disability, or disqualification of the Mayor, perform all the duties and exercise all the rights, powers and privileges of the office of Mayor. (*Ga. L. 1973, p. 2779*)
8. **Vacancy in Office of Mayor or Councilman.**
 - A. A vacancy shall exist if the Mayor or a councilman resigns, dies, removes his residence from the city, or is absent from four consecutive meetings of the governing authority, except if granted a leave of absence by the city council, which leave shall be entered upon the minute books, or if he is adjudged incompetent or is convicted of malfeasance in office, or of a felony or any violation of election laws.
 - B. The Mayor and Council shall appoint a qualified person to fill any such vacancy in the office of councilman, said person to hold office until the next regular election, when a councilman shall be elected to fill the remainder of the unexpired term.
 - C. In the event a vacancy should occur in the office of the Mayor, a special election shall be called and held in the manner prescribed by the Georgia Municipal Election Code (Title 34A, Code of Georgia 1933) as it now exists or may hereafter be amended. Provided, however, that in the event such vacancy occurs within six months next preceding the expiration of term of office of said Mayor, then in that event the said vacancy shall be filled by the Mayor pro tem., or by any councilman elected by the council for that purpose, and provided further that in the event such vacancy should occur within three months prior to a regular annual election, then in that event no special election shall be called or held, and the vacancy shall be filled by the Mayor pro tem., or any councilman elected by the council for that purpose who shall serve until such regular annual election and the vacancy shall be filled by election of a Mayor for the remainder of the unexpired term. (*Ga. L. 1973, p. 2779*)
9. **Compensation.** For carrying out their duties, the Mayor shall receive a salary not to exceed one hundred and twenty-five dollars per annum and the councilmen shall receive a salary not to exceed sixty dollars per annum. (*Ga. L. 1973, p. 2779*)
10. **City Clerk; Deputies.**
 - A. The Mayor and Council of said city, annually at their first meeting in January, or as soon thereafter as practical, may elect a city clerk and such deputy city clerks as they deem necessary. The city clerk shall also be ex officio treasurer. He shall be responsible for keeping and preserving the city seal and all records of the council, attending meetings of the Mayor and Council and

keeping a journal of its proceedings at such meetings, including the names of members present and absent, the vote of each member on each question, each motion considered, and the text of each resolution or ordinance considered, preparing and certifying copies of official records in his office, for which fees may be prescribed by ordinances; and performing such other duties as may be required by the council or Mayor.

- B.** The Mayor and Council shall require the clerk-treasurer, before entering upon discharge of his duties, to give good and sufficient bond in an amount to be decided by the Mayor and Council, but not less than \$3,000.00, said bond payable to the City of Lexington for the faithful performance of his duties and to secure against corruption, malfeasance, misappropriations or unlawful expenditures. Said surety bond shall be obtained from a surety company licensed to do business in the State of Georgia, and approved by the Mayor and Council, and the premium thereon shall be paid by the city. The Mayor and Council may require a similar bond to be given by deputy city clerks. (*Ga. L. 1973, p. 2779*)

11. City Legislation.

- A.** Any action of the Mayor and Council having a regulatory or penal effect or required to be done by ordinance under this Act, shall be done only by ordinance.
- B.** Each ordinance shall be in written form before being voted upon. A majority of those persons present shall have the power to establish by ordinance the procedure, manner and method by which ordinances and resolutions shall be enacted by the Mayor and Council.
- C.** The Mayor and Council shall have the power to provide for the recording and preservation of all ordinances and resolutions and for the codification, printing and distribution of all city ordinances, resolutions and regulations.
- D.** The Mayor and Council may adopt any standard code of technical regulations by references thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally. The method and manner of authenticating the matter adopted by reference shall be prescribed in the adopting ordinance. The Mayor and Council may adopt by reference, in any ordinance, maps, charts, plats of survey, schedules of rates and fees, and similar compilations and documents without attaching said materials to the adopting ordinance shall prescribe the manner in which said material shall be authenticated and said material is on file with the city clerk and available for public inspection. (*Ga. L. 1973, p. 2779*)

- 12. City Code.** The Mayor and Council may provide for the preparation of a general codification of all city ordinances having the force and effect of law. The general codification may be adopted by the Mayor and Council by ordinance and be published together with this charter, and any amendment thereto and such codes of technical regulations and other rules and regulations as the Mayor and Council may specify. This compilation, if done, shall be known and cited officially as "The Code of the City of Lexington". The Mayor and Council may make such code available for purchase by the public at a reasonable price as fixed by the Mayor and Council. (*Ga. L. 1973, p. 2779*)

Article III. ORGANIZATION AND PERSONNEL

1. Organization.

- A.** The city government shall continue as presently organized, unless and until otherwise provided by ordinance. The Mayor and Council, by such ordinances, may establish, abolish, merge or consolidate offices, positions or employment, departments and agencies of the city: may provide that the same person shall fill a number of offices and positions of employment, and may transfer or change the functions and duties of offices, positions of employment, departments and agencies of the city.
- B.** In all cases where personnel are elected or appointed, the Mayor shall have the right to vote thereon as heretofore provided in this charter. (*Ga. L. 1973, p. 2779*)

- 2. Administrative Duties of Mayor.** The Mayor shall be the executive head of the city government, responsible for the efficient and orderly administration of the city's affairs. The Mayor shall be responsible for the enforcement of laws, rules and regulations, ordinances and franchises in the city; and the city attorney shall take such legal action as the Mayor may direct for such purposes. He may conduct inquiries and investigations into the conduct of the city's affairs and shall have such powers and duties as

- may be provided by ordinance not inconsistent with this charter. (*Ga. L. 1973, p. 2779*)
3. **City Attorney.** The Mayor and Council may appoint a city attorney. The city attorney shall be responsible for representing and defending the city in all litigation in which the city is a part; shall advise the council, Mayor and other officers and employees of the city. Concerning legal aspects of the city's affairs, and shall perform such other duties as provided by the Mayor and city council. (*Ga. L. 1973, p. 2779*)
 4. **City Manager.** The Mayor and Council are hereby authorized to appoint a city manager for an indefinite term, who shall serve at the pleasure of the Mayor and Council. He shall have such duties as the Mayor and Council shall provide, including whatever duties, powers and authority possessed by the Mayor and Council they desire to delegate to him. Any such delegation may be withdrawn at any time. The Mayor and Council shall fix the compensation of the city manager. (*Ga. L. 1973, p. 2779*)
 5. **Marshal.** The Mayor and Council shall appoint annually a marshal who shall be the chief police officer of the city. The marshal shall be responsible to the Mayor and Council for the enforcement of all ordinances, rules and regulations of the city, and shall perform such duties as are delegated to him by the Mayor and Council. (*Ga. L. 1973, p. 2779*)
 6. **Oath of Office.** Before a person takes any office in the city government, he shall take before an officer of the State, authorized to administer oaths, the following such oath or affirmation:
"I do solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Georgia; that I will in all respects observe the provisions of the charter and ordinances of the City of Lexington, and I will faithfully discharge the duties of the office of _____, so help me God." (*Ga. L. 1973, p. 2779*)
 7. **Political Activity Prohibited.** No officer or employee of the city, other than the Mayor, councilmen and city attorney, shall continue in employment of the city after becoming a candidate for nomination of election to any city office. (*Ga. L. 1973, p. 2779*)

Article IV. FISCAL ADMINISTRATION

1. **Property Taxes.**
 - A. All property subject to taxation for state or country purposes, assessed as of January 1 in each year, shall be subject to the property tax levied by the city, and shall be returned for taxes on or before April 1.
 - B. If such return is not made by the property owner, the assessing authority, which can be either the board of assessors of the city, which shall consist of two councilmen and a property owner, the county assessing authority, or such other authority as the council by ordinance may designate, shall assess such property for taxation from the best information they can obtain as to its value for the year in default, and notify said owner of the valuation, which shall be final, unless the owner shall claim that it is excessive, said claim to be asserted as provided by general law. If a return is not made by the property owner, then there shall be assessed a penalty of ten percent of the taxes due on said property.
 - C. The Mayor and Council may provide by ordinance that owners of real property shall not be required to make any returns after their initial return if there has been no change in the status of the property.
 - D. Taxes shall be due on October 1 of each year and shall become past due or delinquent if not paid on or before December 20 of each year. The Mayor and city council by ordinance may provide for an independent city assessment as provided by Georgia law or may elect to use the county assessment for the year in which city taxes are to be levied. If an independent city assessment is made, a board of equalization, consisting of three resident property owners of the city appointed by the Mayor and city council, with compensation fixed by ordinance, shall hear appeals of taxpayers taken within ten days after the city clerk has sent a notice, by ordinary mail, of a new or increased assessment. Except as otherwise provided in this Section, appeals involving city property assessments may be taken as now or as may hereinafter be provided by general law. (*Ga. L. 1973, p. 2779*)

2. **Tax Levy.** The Mayor and Council may be authorized to levy an ad valorem tax on all real estate and personal property within the corporate limits of the city for the purposes of raising revenues to defray the costs of operating the city government, providing governmental services, and for any other public purpose, in addition to a sufficient levy to pay principal and interest on general obligations. Said city is hereby exempted from the provisions of Georgia Code sections 92-4101 to 92-4104. (*Ga. L. 1973, p. 2779*)
3. **Tax Due Date and Tax Bills.**
 - A. The due date of property taxes shall be October 1 of each year. The city shall send tax bills to taxpayers showing the assessed valuations, amount of taxes due, tax due dates and information as to delinquency rates and penalties. Failure to send tax bills shall not, however, invalidate any tax. Property taxes shall become delinquent if not paid on or before December 20 of each year, which time may be changed by ordinance and at which time a penalty of ten percent in addition to fi. fa. charge shall be added and thereafter such taxes shall be subject to interest at the rate of nine percent per annum, from the due date until paid. On and after the date when such taxes become delinquent, the tax records of the city shall have the force and effect of a judgement of a court of record.
 - B. Said city shall have the right, power and authority to provide by ordinance for the return of all real and personal property for taxation; to provide for the compelling of such return: and to provide penalties for failure to do so; to double tax defaulters, after due notice and hearing to be prescribed by the Mayor and Council, for the current or any previous year, not in conflict with any limitation prescribed by laws of Georgia; to provide the time or times when said taxes shall be due and payable. (*Ga. L. 1973, p. 2779*)
4. **Collection of Delinquent Taxes.** The council may provide by ordinance for the collection of delinquent taxes by fi. fa. issued by the city clerk and executed by the marshal under the same procedure provided by laws governing execution of such process from the superior court, or by the use of any other available legal processes and remedies. A lien shall exist against all property on which city property taxes are levied, as of the assessment ay of January 1 each year, which shall be superior to all other liens except that it shall have dignity with those for federal, state and county taxes. (*Ga. L. 1973, p. 2779*)
5. **Transfer of Executions.** The clerk of the City of Lexington shall be authorized to transfer and assign any fi. fa. or execution issued for street, sewer or any other assessment in the same manner, upon the same terms, and to the same effect, and thereby vest the purchaser of transferee, with the same rights as in cases or transfers of fi. fas. as now provided by law; and all sales of property hereafter made under execution in behalf of the city for the collection of street, sewer and other assessments, the owner or owners, as the case may be, are authorized to redeem same within the same time and in compliance with the same terms and payment of the same premium, interest and costs, as in cases of redemption of property where sold under state or county ad valorem tax fi. fa. as the same now exists or as may from time to time be provided by law. (*Ga. L. 1973, p. 2779*)
6. **Special Assessments.** The Mayor and Council may assess all or part of the cost of constructing, reconstructing, widening or improving or paving any public way, street, sidewalk, curbing, drains, gutters, sewers, water mains or other utility mains and appurtenances, against the abutting property owners, under such terms and conditions as may be prescribed by ordinance. Such special assessments shall become delinquent thirty days after their due dates, and shall thereupon be subject, in addition to fi. fa. charges, to a penalty of ten percent, and shall thereafter be subject to interest at a rate of seven percent per annum from due date until paid. A lien for such amount plus fi. fa. charges, interest and penalties shall exist against the abutting property superior to all other liens, except that it shall be of equal dignity with lines for county and city property taxes, said lien shall be enforceable by the same procedures and under the same remedies as provided in this Article for city and property taxes. (*Ga. L. 1973, p. 2779*)
7. **Sale of City Property.** The Mayor and Council may sell city any city property which is obsolete, surplus or unusable, at public or private sale, with or without advertisement, and for such consideration as the Mayor and Council shall deem equitable and just to the city. (*Ga. L. 1973, p. 2779*)

Article V. ELECTIONS

1. **Regular Elections - Time for Holding and Taking Office.** The regular election for Mayor and city councilmembers shall be held on the Tuesday next following the first Monday in November of each odd-numbered year. Officials elected at any regular election shall take office on the first day of January next

following such an election. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1984, p. 3937, Ga. L. 1995, p. 3542*)

2. **Qualifications of Candidates.** Any person desiring to become a candidate in any regular election shall file written notice of his candidacy with the municipal superintendent not less than fifteen (15) nor more than forty-five (45) days, as prescribed by ordinance, prior to the date fixed for holding of any such election. Any person desiring to become a candidate in any special election shall file written notice of his candidacy with the municipal superintendent not less than ten (10) days nor more than thirty (30) days, as prescribed by ordinance, prior to the date fixed for the holding of any such election. The notice of candidacy shall be accompanied by such a qualification fee as prescribed by ordinance. (*Ga. L. 1973, p. 2779*)
3. **Nomination Petitions.** Nominations of candidates for public office may also be made by nomination petitions, in accordance with Section 34A-910 of the Code of Georgia of 1933, as presently enacted or as may hereafter be amended. The Mayor and Council may provide by ordinance all rules and requirements regulating the use and validity of said petition must be signed by a sufficient number of qualified signatures equal to ten percent of the number of qualified voters registered to vote in the last general election of the city. (*Ga. L. 1973, p. 2779*)
4. **Qualification of Electors.** Any person meeting the qualifications of an elector for members of the General Assembly under state law who has been a bona fide resident of the City of Lexington for ninety days next preceding the election in which he desires to vote for such period as may otherwise be provided by the Georgia Municipal Election Code, shall be qualified to register as an elector in any city election held under this charter. (*Ga. L. 1973, p. 2779*)
5. **Applicability of General Laws.** Except as otherwise provided by this charter, the election of all officials of the City of Lexington where provision is made for election by the qualified voters thereof, shall be applicable with the provisions of the Georgia Municipal Election Code and Title 34A of the Code of Georgia of 1933 as it now exists or may hereafter be amended. Whenever any time period established by the Election Code is altered so as to change or supersede any time period provided herein, it shall be considered that the time periods provided herein will be correspondingly changed so as to avoid any conflict between this charter and the general laws of the State. (*Ga. L. 1973, p.2779*)
6. **Time of Election.** The polls shall be opened from 7:00 o'clock a.m. local time to 7:00 o'clock p.m. local time. (*Ga. L. 1973, p. 2779*)
7. **Place of Elections.** The polling place or places for holding elections shall be prescribed by the Mayor and Council and shall be published in the election notice as required by law; provided, however, any change in polling place shall be effected as provided by section 34A-604 of the Code of Georgia of 1933 as it now exists or may hereafter be amended. (*Ga. L. 1973, p. 2779*)
8. **Voter Registration.** In all elections held in the City of Lexington whether special or general elections, the voters, in addition to the qualifications already prescribed shall be registered as may be prescribed by ordinance. (*Ga. L. 1973, p. 2779*)
9. **Rules.** The Mayor and Council are hereby authorized to enact by ordinance such additional rules consistent with this charter and general laws as are deemed necessary for conduct of elections. (*Ga. L. 1973, p. 2779*)
10. **Call for Election.** Any call for an election which is required to be made by the laws of this State shall be made by the Mayor and Council. (*Ga. L. 1973, p. 2779*)
11. **Absentee Ballots.** The Mayor and Council at its discretion is authorized to provide by ordinance for absentee ballots for any city election. (*Ga. L. 1973, p. 2779*)

Article VI. RECORDER'S COURT

1. **Creation.** This is hereby established a court to be known as the Recorder's Court, City of Lexington, which shall have jurisdiction and authority to try offenses against laws and ordinances of the City of Lexington and to punish for a violation of the laws and ordinances of the City of Lexington. Said court shall have the power and authority to enforce its judgments by the imposition of such penalties as may be provided by law; to punish witnesses for nonattendance; to punish any person who may counsel or advise, aid, encourage, or persuade another whose testimony is desired or material in any proceeding before said court, to go or move beyond the reach of the process of the court; to try all offenses within the territorial limits of the City of Lexington constituting traffic cases which under the laws of Georgia are placed within the jurisdiction of municipal or police courts to the extent of and in accordance with the provisions of such

- laws and all laws subsequently enacted amendatory thereto; to establish bail and recognizances to insure the presence of those charged with violations and to prescribe the condition of forfeiture of the same; and to perform all other acts necessary and proper to the conduct of the recorder's court. The presiding officer of such court shall be known as the recorder. The recorder's court shall be convened at such times as designated by ordinance or as such times as deemed necessary to keep current as recorder's court dockets. The recorder's court shall sit at a place designated by the Mayor and Council. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1976, p. 3285*)
2. **Recorder.**
 - A. The recorder shall be appointed by the Mayor and Council and shall serve at the pleasure of the Mayor and Council.
 - B. No person shall be qualified or eligible to serve as recorder unless the person shall have attained the age of 21 years and shall not have been convicted of a crime involving moral turpitude. The Mayor and Council shall determine recorder's compensation.
 - C. The Mayor and Council may appoint a recorder pro tem to serve in the absence of the recorder. Said recorder pro tem shall have the same qualifications as the recorder. If the Mayor is the recorder, the Mayor pro tem shall act as the recorder pro tem. The recorder pro tem shall serve at the pleasure of the Mayor and Council.
 - D. Before entering on duties of this office, the recorder or recorder pro tem shall take an oath before an officer duly authorized to administer oaths in the State of Georgia, that he will truly, honestly, and faithfully discharge the duties of his office to the best of his ability without fear, favor, or partiality. This oath shall be entered upon the minutes of the meeting of the Mayor and Council. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1976, p. 3285*)
 3. **Jurisdiction.** The recorder shall have power to impose fines, costs and forfeitures for the violation of any law or ordinance of the City of Lexington passed in accordance with this Act. Said recorder shall have the authority to punish for contempt by imposing a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days, one or both; said recorder shall have full authority upon conviction to sentence any offender to labor upon the streets or other public works in the City of Lexington for a period not exceeding thirty days, or to impose a fine not exceeding one hundred dollars, or to sentence the offender to be confined and imprisoned in a detention facility that is designated by the Mayor and Council for a period not exceeding thirty days. Any one or more of said penalties may be imposed at the discretion of the recorder. Except as may be herein otherwise specified, the recorder's court is specifically invested with all jurisdiction and powers throughout the entire area within the corporate limits granted by State laws, generally to Mayors, recorders, and police courts, and particularly such laws as authorize the abatement of nuisances. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1976, p. 3285*)
 4. **Right of Appeal.** The right of appeal and procedures pertaining to appeal bonds to the Superior Court of Oglethorpe County from the recorder's court shall lie in the same manner and under the same procedure as generally prescribed for appeals and bonds from the probate court. An appeal to the superior court shall be a de novo proceeding, and the City of Lexington shall be entitled to reimbursement of its costs. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1976, p. 3285*)
 5. **Court Costs.** In all cases in the recorder's court, the Mayor and Council may establish a schedule of fees to defray costs of operation and the City of Lexington shall be entitled to reimbursement of the costs, meals, transportation, and caretaking of prisoners bound over to the superior court for violations of State law. The Mayor and Council may also provide a uniform scale of costs of the clerk and police officers for all services in the arrest and prosecution of offenders in the recorder's court, and in the issuance and collection of tax and other executions and for their collections and payments into the City of Lexington treasury. The recorder is hereby authorized to issue subpoenas to compel the attendance of witnesses to said recorder's court, and to issue such other processes as may be necessary for the proper administration of said court. (*Ga. L. 1973, p. 2779, as amended by Ga. L. 1976, p. 3285*)
 6. **Rules for Court.** With the approval of the Mayor and Council, the recorder shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the business of the recorder's court; provided, however, that the Mayor and Council may adopt in part or in toto the rules and regulations relative to the procedures of the operation of the superior courts under the general laws of the State of Georgia. The recorder shall have the powers of a superior court judge to control the proceedings in the recorder's court. (*Ga. L. 1973, p. 2779, as*

amended by Ga. L. 1976, p. 3285)

Article VII. MISCELLANEOUS

1. **Severability.** In the event any section, subsection, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain full of force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional. *(Ga. L. 1973, p. 2779)*
2. **Specific Repealer.** An Act approved December 13, 1899 (Ga. L. 1899, p. 239), as amended, is hereby repealed in its entirety, effective July 1, 1973; provided, however, the members of the governing authority of the City of Lexington heretofore elected shall continue to serve as members of the governing authority of said city as provided by this Act in accordance with the provisions of subsection (a) of section 2.03 of this Act; provided, further, that the corporate limits of said city shall continue to be the territory hereinbefore embraced in the City of Lexington. *(Ga. L. 1973, p. 2779)*
3. **General Repealer.** All law and parts of laws in conflict with this Act are hereby repealed. *(Ga. L. 1973, p. 2779)*

CODE OF ORDINANCES

GENERAL PROVISIONS

CHAPTER 1: GENERAL PROVISIONS

Section

1-101	How Code Designated and Cited
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Section 1-101 How Code Designated and Cited

The provisions embraced in the following chapters and sections shall constitute and be designated "The Code of the City of Lexington, Georgia," and may be so cited.

Section 1-102 Rules of Construction

In the construction of this code and of all sections, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the Mayor and City Council.

- 1. General Rule.** All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.
- 2. Gender -- Singular and Plural.** Every word in any code provision or section importing the masculine gender shall extend to and be applied to females as well as males; and every word importing the singular number only shall extend and be applied to several persons or things as well as to one person or thing; and every word importing the plural number only shall extend and be applied to one person or thing as well as to several persons or things.
- 3. Tenses.** The use of any verb in the present tense shall include the future when applicable.
- 4. Joint Authority.** All words purporting to give a joint authority to three (3) or more city officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.
- 5. Delegation of Authority.** Whenever a provision requires the head of a department or other officer of the city to do some act or perform some duty, it shall be construed to authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.
- 6. Computation of Time.** The time within which an act is to be done as provided in any code provision or section or in any order issued pursuant to any section, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is a Saturday, Sunday or a legal holiday it shall be excluded; and when any such time is expressed in hours the whole of Sunday, from midnight to midnight, shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- 7. Overlapping Provisions.** Where any provision of this code imposes greater restrictions upon the subject matter than any general provisions imposed by this code, the provision imposing the greater restriction or regulation shall be applicable.

Section 1-103 Definitions

Words and phrases used in this code shall have the following meanings, unless otherwise specified.

1. **Advice and Consent.** Whenever the term "advice and consent" of the City Council is used in this code it shall be construed to mean an affirmative vote of the majority of the entire City Council.
2. **City.** The Words "the city" or "this city" shall mean the City of Lexington, Georgia.
3. **City Council, Council.** The words "city council" or "the council" shall mean the City Council of the City of Lexington, Georgia.
4. **County.** The words "the county" or "this county" shall mean Oglethorpe County, Georgia.
5. **Court.** The word "court" shall mean the Municipal Court of the city.
6. **Governing Authority, Governing Body.** The words "governing authority" or "governing body" shall mean the Mayor and City Council of the City of Lexington, Georgia.
7. **Judge or Recorder.** The words "judge" or "recorder" shall mean the Judge of the Municipal Court of the city.
8. **Mayor.** The word "mayor" shall mean the Mayor of the City of Lexington, Georgia.
9. **Mayor and City Council.** The term "mayor and city council" shall mean the Mayor and City Council of the City of Lexington, Georgia.
10. **Misdemeanor.** The term "misdemeanor" shall mean a violation of the state criminal law punishable by a fine not in excess of one thousand dollars (\$1,000.00) or confinement in a county or other jail for a term not exceeding twelve (12) months, or by both such fine and imprisonment.
11. **Municipality.** The word "municipality" shall be construed as synonymous with the term "city," "town," or "municipal corporation."
12. **Oath.** The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "affirm" and "affirmed" shall be equivalent to the words "swear" or "sworn."
13. **Ordinance.** The word "ordinance" shall mean a legislative act of the municipal governing body of a general and permanent nature.
14. **Owner.** The word "owner" when applied to a building or to land, shall include any part owner, joint owner, tenant in common, joint tenant by the entirety, of the whole or a part of such building or land.
15. **Person.** The word "person" shall include a corporation, firm, agency, partnership, association, organization, government, and any other group acting as a unit, as well as an individual.
16. **Personal Property.** The term "personal property" shall include every specie of property except real property, as hereinafter defined.
17. **Preceding, Following.** The words "preceding" and "following" shall mean next before and next after, respectively.
18. **Property.** The term "property" means anything of value, including but not limited to real estate, tangible and intangible personal property, contract rights, services, choses in action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power.
19. **Real Property.** The words "real property" shall include lands, tenements, and hereditaments.
20. **Reasonable Time or Notice.** Reasonable time or notice shall be deemed to mean only such time as may be necessary for the prompt performance or the act required.
21. **Resolution.** The word "resolution" shall mean a legislative act of the municipal governing body of a special or temporary character.
22. **Sidewalk.** The word "sidewalk" shall mean any portion of a street between the curb line and the adjacent property line, intended for the use of the pedestrians, but shall not include any unimproved areas between the curb line and improved walkways.
23. **Signature, Subscription.** The word "signature" or "subscription" shall include a mark intended as such when the person cannot write.
24. **State.** The words "state" or "this state" shall mean the State of Georgia.
25. **Street.** The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, viaduct or bridge, and the approach thereto, within the city.
26. **Tenant or Occupant.** The word "tenant" or "occupant," when applied to a building or to land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building

or land, either alone or with others.

- 27. **Week.** The word "week" shall mean seven (7) calendar days.
- 28. **Writing or Written.** The words "writing" and "written" shall include printing and any other mode of representing words and letters.
- 29. **Year.** The word "year" shall mean a calendar year.

Section 1-104 Section Headings

The headings of the several sections and subsections of this code are intended as mere captions to indicate the contents of the section or subsection and shall not be deemed or taken to be titles of such sections, nor as any part of the section or subsection, nor unless so expressly provided, shall they be so deemed when any of such sections or subsections, including the headings, is amended or re-enacted.

Section 1-105 Effect of Repeal or Expiration of Code Section or Ordinance

- 1. The repeal of a code section or ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued or any offense committed, any penalty or punishment incurred, or any proceeding commenced before the repeal took effect or the ordinance expired.
- 2. When any ordinance repealing a former code section, ordinance, clause or provision, shall be itself repealed, such repeal shall not be construed to revive such former code section, ordinance, clause, or provision, unless it shall be expressly so provided.

Section 1-106 Amending Code

- 1. All ordinances passed subsequent to this code which amend, repeal or in any way affect this code shall be numbered in accordance with the numbering system of this code and printed for inclusion herein. In the case of repealed chapters, sections, and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as the code and subsequent ordinances omitted are readopted as a new code by the City Council.
- 2. Amendments to any of the provisions of this code may be made by specific reference to the section number of this code in the following language: "That section _____ of the Code of Ordinances, City of Lexington, Georgia, is hereby amended to read as follows" The new provisions may then be set out in full as desired.
- 3. In the event a new section not heretofore existing in the code is to be added, the following language may be used. "The Code of Ordinances of the City of Lexington, Georgia, is hereby amended by adding a section (or subsection chapter) to be numbered _____, which section reads as follows" The new provision shall then be set out in full as desired.
- 4. All sections, chapters, or provisions sought to be repealed must be specifically repealed by section, chapter, or provision number, as the case may be.

Section 1-107 Altering Code

It shall be unlawful for any person to change or amend by additions or deletions any part or portion of this code, or to insert or delete pages or portions thereof, or to alter or tamper with such code in any manner whatsoever, except by ordinance or resolution or other official act of the Mayor and City Council.

Section 1-108 Severability

The sections, paragraphs, sentences, clauses, and phrases of this code are severable, and if any phrase, clause, sentence, paragraph, or section of this code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this code.

Section 1-109 Penalty Where No Penalty Provided

1. Whenever in this code or in any ordinance of the city any act is prohibited or is declared to be unlawful, or whenever in such code or ordinance the doing of any act is declared to be unlawful, and no specific penalty is provided therefore, the violation of such provision of this code or any ordinance shall subject the person committing the violation to a fine not exceeding one hundred dollars (\$100.00) and costs or to imprisonment for a term not exceeding ninety (90) days, or to both such fine and imprisonment, any or all of such penalties to be imposed at the discretion of the Judge of the Municipal Court.
2. The infliction of a penalty under the provisions of this section shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the city's charter or code.

Section 1-110 Ordinances Not Affected by Code

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

1. Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.
2. Any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness.
3. Any contract or obligation assumed by the city.
4. Any ordinance fixing the salary of any city officer or employee.
5. Any right or franchise granted by the city.
6. Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the city.
7. Any appropriation ordinance.
8. Any ordinance which, by its own terms, is effective for a stated or limited term.
9. Any ordinance providing for local improvements and assessing taxes therefor.
10. Any zoning ordinance.
11. Any ordinance dedicating or accepting any subdivision plat.
12. Any ordinance describing or altering the boundaries of the city.
13. The administrative ordinances or resolutions of the city not in conflict or inconsistent with the provisions of this Code.
14. Any ordinance levying or imposing taxes not included in this Code.
15. Any ordinance establishing or prescribing street grades in the city.
16. Any ordinance setting the rate of ad valorem taxes.

No such ordinance shall be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this chapter; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

PART I: ORGANIZATION OF THE GOVERNMENT

CHAPTER 2: ELECTIONS

Section

Article I. IN GENERAL

2-101 Adoption of State Rules and Regulations

Article II. RESERVED

Article III. RESERVED

Article IV. VOTING

2-401 Polling Places



Article I. IN GENERAL

Section 2-101 Adoption of State Rules and Regulations

The rules and regulations promulgated by the State Election Board which pertain to municipal elections, together with the provisions of the "Georgia Municipal Election Code" contained in Title 21 of the Official Code of Georgia Annotated, are hereby adopted as the rules, regulations, and provisions that shall govern the conduct of municipal general and special elections in this city.

Article II. RESERVED

Article III. RESERVED

Article IV. VOTING

Section 2-401 Polling Places

The polling place within the city shall be the City Hall.

CHAPTER 3: ADMINISTRATION

Section

Article I. IN GENERAL

- 3-101 Exercise of Governmental Authority
- 3-102 Code of Ethics
- 3-103 Administrative Policy and Procedures
- 3-104 Oaths
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- 3-106 Compensation

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3-801 Historic Preservation Commission



Article I. IN GENERAL

Section 3-101 Exercise of Governmental Authority

In addition to the other powers which it may have, the governing body of any municipal corporation shall have the following powers, under this chapter, relating to the administration of municipal government:

1. The power to establish municipal offices, agencies, and employments;
2. The power to define, regulate, and alter the powers, duties, qualifications, compensation, and tenure of all municipal officers, agents, and employees, provided that the members of the municipal governing body shall not have the right to fix or change their own terms or the terms of their successors, nor to alter their own salaries or compensation, except pursuant to the authority of *O.C.G.A. § 36-35-4*, nor to alter such duties or responsibilities as are specifically given to a particular elective official by charter;
3. The power to authorize any of the offices, agents, and employees of the municipal corporation to serve, in any manner prescribed by applicable law; any process, summons, notice, or order on all persons, as defined in *O.C.G.A. § 1-3-3* therein named, when:
 - A. The paper to be served rises out of or relates to an activity or condition conducted or maintained by such person within the territorial jurisdiction of the municipal corporation in violation of an applicable law or ordinance; and
 - B. The paper to be served originates in or is issued under the authority of the department or branch of municipal government employing such officer, agent, or employee.

Where any such paper names one or more persons who reside outside the territorial jurisdiction of the municipal corporation, the several sheriffs, marshals, and constables of the several counties of this state are authorized and directed to serve any such paper and make appropriate return of such service by them, as other process is served and returned, on such named persons residing in their respective jurisdictions, upon receipt of a written request to make such service, for the fees allowed for service of process issued by the superior courts of this state;

4. The power to establish merit systems, retirement systems, and insurance plans for all municipal employees and to establish insurance plans for school employees of independent municipal systems and to provide the method or methods of financing such systems and plans;
5. The power to contract with any state department or agency or any other political subdivision for joint services or the exchange of services; to contract with such agencies or subdivisions for the joint use of facilities or equipment; and to contract with any state agency or political subdivision to perform any service or execute any project for such agency or subdivision in which the municipal corporation has an interest;
6. The power to legislate, regulate, and administer all matters pertaining to absentee voting in municipal elections; and
7. The power to grant franchises to or make contracts with railroads, street railways, or urban transportation companies, electric light or power companies, gas companies, steam-heat companies, telephone and telegraph companies, water companies, and other public utilities for the use and occupancy of the streets of the city, for the purpose of rendering utility services, upon such conditions and for such time as the governing authority of the municipal corporation may deem wise and subject to the Constitution and the general laws of this state.

Section 3-102 Code of Ethics

1. **Prohibited Conduct.** Public officials and employees of the city shall treat all citizens with courtesy,

impartiality, fairness, and equality under the law, and shall avoid both actual potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such official and employee shall include, but not be limited to, the following:

- A. Granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public large;
 - B. Requesting, using, or permitting the use of any publicly-owned or publicly-supported property, vehicle, equipment, labor, or service for the personal convenience or the private advantage of himself or any other person, except as otherwise allowed by law;
 - C. Participating in the deliberation of or voting on any matter involving his financial or personal interest;
 - D. Engaging in private employment with, or rendering services for, any private person who has business transactions with the city, unless he has made full public disclosure of the nature and extent of such employment or services;
 - E. Appearing on behalf of any private persons, other than himself, before any public body in the city;
 - F. Accepting any gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to him if he were not an official or employee;
 - G. Disclosing any confidential information concerning any official or employee, or any other person, or any property or governmental affairs of the city, without prior formal authorization of the governing body;
 - H. Using or permitting the use of confidential information to advance the financial or personal interest of himself or any other person; or
 - I. Appointing or voting for the appointment of any person related to him by blood or marriage to fill an office, position, employment, or duty, when the salary, wages, pay, or compensation is to be paid out of public funds.
2. **Hearings and Determinations.** Upon the sworn complaint of any person alleging facts which if true would constitute a violation of this section, the City Council shall conduct a public hearing at which the accused shall be given an opportunity to be heard, either personally or through City Council. At the conclusion of said hearing, the City Council shall, in written findings of fact and conclusions based thereon, make a determination concerning the propriety of the conduct of the official or employee in question.

Section 3-103 Administrative Policy and Procedures

- 1. **Officers.** Each officer shall perform all duties required of his office by state law, the charter, and this code, and such other duties not in conflict therewith as may be required by the Mayor.
- 2. **Operation of Administrative Service.** All units in the administrative service shall:
 - A. **Office Hours.** Be open between the hours of 1:00 p.m. and 3:00 p.m. on Monday, Wednesday, and Friday.
 - B. **Make Daily Deposit.** Make a regular deposit with the City Treasurer of any monies received directly from the public.
 - C. **Payment of Monies.** Pay out monies belonging to the city only in the manner prescribed herein.

Section 3-104 Oaths

- 1. All officers and employees required by charter or some other provision of law to take an oath shall, before entering upon the discharge of their respective duties, take and subscribe the following oath before an officer authorized by law to administer oaths:

"I do solemnly swear that I will faithfully discharge the duties devolved upon me as Mayor or Council member (as the case may be) of the City of Lexington; that I will faithfully execute and enforce the laws of said city to the best of my ability, skill, and knowledge; and that I will do all in my power to promote the general welfare of the inhabitants of said city and common interest thereof."
- 2. In addition to the above oath all officers and employees shall take the following oath:
 - A. Take the oath of office;

- B. Take any oath prescribed by the Constitution of Georgia;
- C. Swear that he or she is not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;
- D. Swear that he or she is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
- E. Swear that he or she is otherwise qualified to hold said office according to the Constitution and laws of Georgia;
- F. Swear that he or she will support the Constitution of the United States and of this state; and
- G. If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state.

Section 3-105 Bonds

Except as otherwise provided by law, the Mayor and City Council may require any department head, city official, or employee, before entering upon the discharge of his duties to give good and sufficient bond in any amount decided by the Mayor and City Council. Said bond shall be payable to the City of Lexington for the faithful performance of said duties and to secure against corruption, malfeasance, misappropriation, or unlawful expenditures in office. Said surety bonds shall be obtained from a surety company licensed to do business in the State of Georgia and approved by the Mayor and City Council. The premiums thereon shall be paid by the city.

Section 3-106 Compensation

Each officer and employee of the city shall receive such compensation as be provided from time to time by resolution.

Article II. THE MAYOR AND CITY COUNCIL GENERALLY

Section 3-201 Reserved

Section 3-202 Qualifications for Office

Any person whose principal place of residence is within the corporate limits of the city and who is both a qualified voter of the city and at least twenty-one (21) years of age at the time of election shall be eligible for the office of Mayor or city council member. Should the Mayor or any member of City Council cease to maintain his principal place of residence within the city during his term of office, his office shall thereby become vacant.

Section 3-203 Vacancies

In case of a vacancy in the office of Mayor from failure to elect, death, removal, or any cause whatsoever, such vacancy shall be filled by a special election ordered by the City Council. Provided, however, that in the event such vacancy occurs within six months next preceding the expiration of the term of office of the Mayor, then the vacancy shall be filled by the Mayor pro temp or by any Councilmember elected by the council for that purpose. A vacancy in the office of Councilman shall be filled by the appointment of a qualified person by the Mayor and Council. Said appointed person shall hold office until the next regular election. The special election shall be held and conducted in accordance with Chapter 3, Title 21 of the *O.C.G.A.*

Section 3-204 Meetings

1. **Meetings.** The City Council shall hold regular meetings on the second Thursday at 7:30 p.m. at the City Hall, unless otherwise ordered by the City Council; provided, that the Mayor may convene the City Council whenever in his opinion the public business requires it, and he shall do so upon the application of The Mayor and two (2) Councilmembers or the Mayor Pro Temp and two (2) Councilmembers. All meetings at

which official actions are to be taken shall be open to the public.

- A. Notice.** The Mayor and City Council shall prescribe the time, place, and dates of regular meetings of the Mayor and City Council. Such information shall be available to the general public and a notice containing such information shall be posted and maintained in a conspicuous place available to the public at the regular meeting place of the agency. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting. Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meeting, the Mayor and City Council shall give due notice thereof. "Due notice shall be the posting of a written notice for at least twenty-four (24) hours at the place of regular meetings and giving of written or oral notice at least twenty-four (24) hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the Mayor and City Council to a newspaper having a general circulation in said county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly "due notice" shall be the posting of a written notice for at least twenty-four (24) hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least twenty-four (24) hours in advance of the called meeting. When special circumstances occur and are so declared by the Mayor and City Council, the Mayor and City Council may hold a meeting with less than twenty-four (24) hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to said county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within twenty-four (24) hours and the nature of the notice shall be recorded in the minutes. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required or permitted by this subsection may be given by telephone.

Prior to any meeting, the City Clerk shall make available an agenda of all matters expected come before the Mayor and Council at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two (2) weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

- B. Agenda and Minutes.** An agenda of the subjects acted on and those members present at a meeting of the Mayor and City Council shall be written and made available to the public for inspection within two (2) business days of the adjournment of a meeting of the Mayor and City Council. The minutes of a meeting of the Mayor and City Council shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular meeting of the Mayor and City Council; provided, however, nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the Mayor and City Council or not. Said minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. In the case of a roll-call vote, the name of each person voting for or against a proposal shall be recorded and in all other cases it shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining. Official minutes of the meetings of a county governing authority shall be maintained in the offices of the county governing authority. Copies of contracts, maps, or similar material or documents related to actions taken by a county governing authority may be included in the minutes or incorporated by reference to an alternate location. Where incorporated by reference, such documents shall be stored in a central location or locations identified by ordinance or resolution of the county governing authority.

NOTE: "Meeting" means the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter, official business or policy to the governing body are to be formulated or discussed. The assembling together of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities under the jurisdiction of such agency or for the purposes of meeting with the governing bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and at which no final official action is to be taken shall not be deemed a "meeting."

C. Closed Meetings.

- (1) When any meeting of the City Council is closed to the public pursuant to Georgia Law, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of the City Council is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in Georgia Law.
- (2) When any meeting of the City Council is closed to the public pursuant to subsection (1) of this section, the chairperson or other person presiding over such meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

2. **Duty to Attend.** It shall be the duty of each member of the City Council to attend each meeting of the City Council, unless he or she is prevented by some unavoidable circumstance.

Section 3-205 Standing Committees

The following shall be the standing committees of the City Council:

- Streets
- Fire
- Water
- Sanitation
- Finance
- 911 Advisory Committee

Section 3-206 Rules for the Conduct of Business

Except as otherwise provided in this section, Roberts' Rules of Order shall govern the conduct of city council meetings.

1. **Call to Order.** All meetings of the City Council shall be open to the public. The Mayor, or in his absence, the Mayor pro tempore, shall take the chair at the hour appointed for any regular, temporarily adjourned, special, or called meeting; and shall immediately call the city council meeting to order.
2. **Roll Call.** Before proceeding with the business of the City Council, the City Clerk or his deputy shall call the roll of the members, and the names of those present shall be entered in the minutes.
3. **Quorum.** A majority of all the members elected to the City Council shall constitute a quorum at any regular or special meeting of the City Council and an affirmative vote of a majority of such number shall be sufficient to permit the conduct of all business except that for which a larger vote has been mandated by

this code.

4. **Order of Business.** The business of the City Council shall be taken up for consideration and disposition in the following order:
 - A. call to order by presiding officer
 - B. roll call
 - C. approval of minutes of previous meeting
 - D. petitions and communications
 - E. reports of standing committees
 - F. reports of special committees
 - G. unfinished business
 - H. new business
 - I. adjournment
5. **Reading of Minutes.** Unless a reading of the minutes of a city council meeting is requested by a member of the City Council, such minutes may be approved without a reading if the City Clerk has previously furnished each member with a copy thereof.
6. **Reports By Committees.** Any business coming before the City Council concerning the subject matter of which any standing or special committee has jurisdiction, may be referred to the proper committee for investigation and report. It shall be the duty of each standing or special committee, whenever required by the Mayor or by the City Council, or any member of the City Council, to examine any matter referred to such committee, and make a report thereof at the next regular meeting of the City Council, or show good cause why no report is made, Such reports shall not be in writing unless so directed by the presiding officer.

Each standing committee shall examine the matters within its jurisdiction, and make such reports and recommendations from time to time as may be necessary.

7. **Manner of Addressing Council.** No member, while the City Council is in session, shall speak on any subject unless recognized by the presiding officer. Every speaker shall address the chair, and no member shall interrupt anyone who is speaking, except to call him to order or for explanation.
8. **Limitations on Addressing City Council.** Any person not a member of City Council who desires to address the City Council shall first secure the permission of the presiding officer, and then shall step up in front of the rail, give his name and address in an audible tone of voice for the record, and direct his remarks to the City Council as a body rather than to any particular member, limiting such remarks to five (5) minutes unless additional time is granted by City Council.
9. **Ordinances, Resolutions, Regulations, Contracts and Inter-local Agreements.** Unless otherwise provided in this code, all ordinances, resolutions, contracts, and inter-local agreements of the city shall be prepared, approved, introduced, and adopted in the following manner:
 - A. **Preparation.** All ordinances shall be prepared by the City Attorney. No ordinance shall be prepared for presentation to the City Council unless ordered by a majority vote of the City Council, or requested in writing by the Mayor, or prepared by the City Attorney on his own initiative.
 - B. **Administrative Staff Approval.** All ordinances, resolutions, and contract documents shall, before presentation to the City Council, have been approved as to form and legality by the City Attorney or his authorized representative, and shall have been examined and approved for administration by the Mayor or his authorized representative where there are substantive matters of administration involved. All such instruments shall have first been referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution, or contract document would involve and be approved by said department head; provided, however, that if approval is not given, then the same shall be returned to the Mayor with a written memorandum of the reasons why such approval is withheld. In the event the questioned instrument is not redrafted to meet a department head objection, or objection is not withdrawn and approval in writing given, then the Mayor shall so advise the City Council and give the reasons advanced by the department head for withholding approval.
 - C. **Introduction and Adoption.**
 - (1) Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain a subject which is not expressed in its title.

The enacting clause shall be "the Council of the City of Lexington hereby ordains. . ." and every ordinance shall so begin.

- (2) An ordinance may be introduced by any member of the City Council and be read at a regular or special meeting of the City Council. Upon introduction of any ordinance, the City Clerk shall, as soon as possible, distribute a copy to the Mayor and to each member of the City Council and shall file a reasonable number of copies in the office of the city clerk and at such other public places as the City Council may designate.
- (3) No ordinance shall be put on its final passage on the same day it is introduced.
- (4) All ordinances shall have three (3) separate readings, but the second and third readings shall never be had on the same day.
- (5) No ordinance shall relate to more than one (1) subject, which shall be clearly expressed in its title, and no ordinance, or section thereof, shall be amended or repealed unless the new ordinance contains the title of the ordinance or section amended or repealed, and when practicable all ordinances shall be introduced as amendments to this code.
- (6) An ordinance, resolution, or contract shall be deemed, adopted, or rejected by the City Council in accordance with the rules which the City Council shall establish. Such ordinances adopted by the City Council shall have the full force and effect of law.

D. Effective Date. Except where applicable in Section 3-206(9)(E) of this chapter, no ordinance shall take effect until five (5) days after the date of its publication, except a public emergency ordinance necessary for the protection of public health, public safety, public property, or the public peace, may be made effective upon adoption.

E. Emergencies. To meet a public emergency affecting life, health, property, or public peace, the City Council may convene on call of the Mayor or three (3) members of the City Council and may promptly adopt an emergency ordinance, but such ordinance shall not levy taxes; grant, renew, or extend a franchise; regulate the rate charged by any public utility for its services; or authorize the borrowing of money except for loans to be repaid within thirty (30) days. An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear and specific terms. An emergency ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced, but the affirmative vote of at least three (3) members of the City Council shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed thirty (30) days following the date upon which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency continues to exist. An emergency ordinance shall also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

10. **Recording Vote.** Whenever any member shall request it the yeas and nays of the members present shall be recorded on the minutes on any question taken.
11. **Questions of Order.** The presiding officer shall decide all questions of order, but any council member who is dissatisfied with the decision may appeal to the City Council in the manner provided by Roberts' Rules of Order for appealing from decisions of presiding officers.
12. **Elections.** All elections by the City Council shall be by ballot, and a majority vote of the whole City Council shall be necessary to an election.
13. **Executive Session.** The City Council may, at any time, upon call therefore by the presiding officer or upon motion duly carried by a council member, meet in executive session. Attendance at such sessions shall be limited to the Mayor and members of City Council and such invites as shall be invited with the unanimous consent of the Mayor and City Council.

Section 3-207 Legislative Authority Generally

The City Council shall exercise the legislative functions of the city, and may pass any ordinance or resolution that deems best for the government of the city in the manner set forth in this chapter; provided, that same is not in conflict with the charter of the city, the Constitution or laws of the State of Georgia, or the Constitution or laws of the United States.

Article III. THE MAYOR**Section 3-301 General Authority**

The Mayor shall be the chief executive and administrative officer of the city government, shall enforce the laws of the city, and shall require the faithful performance of all administrative duties.

Section 3-302 Duties

The Mayor shall have the following duties:

1. **Preside at Meeting.** To preside at all meetings of the City Council, but the Mayor shall not be allowed to vote at such meetings except in the case of a tie vote by the City Council on any question;
2. **Head of the City.** To act as the head of the city for the purpose of service of process and for ceremonial purposes and be the official spokesperson for the city and the chief advocate of policy;
3. **Oaths and Affidavits.** To administer oaths and to take affidavits;
4. **Appointment of Standing Committees.** To appoint at the first meeting each year, or as soon thereafter as expedient, standing committees for that year; but the Mayor may at any time alter the committees and make such changes as the interest of the city may require;
5. **Appointment of Officers and Employees.** To appoint, by and with the advice and consent of the City Council, all officers and employees of the city whose election or appointment is not otherwise provided for;
6. **Dismissal, Suspension, and Discipline of Officers and Employees.** To dismiss, suspend, or discipline for cause all officers and employees appointed or elected by the Mayor and City Council provided that for the purposes of this section "cause" shall be construed to mean:
 - A. negligence or inefficiency in performing the duties of the position held;
 - B. unfitness to perform assigned duties;
 - C. insubordination;
 - D. misconduct;
 - E. conduct reflecting discredit on the department;
 - F. failure to report for work without justifiable cause;
 - G. chronic absenteeism; or
 - H. political activity in violation of municipal regulations;
7. **Preparation of Annual Report.** To prepare and present to the City Council an annual report of the city's affairs including a summary of reports of department heads, and such other reports as the City Council shall require; and
8. **Executing Legal Documents.** To sign on behalf of the city all contracts, deeds, codes, ordinances, and other instruments executed by the city which by law are required to be in writing.

Section 3-303 Powers

The Mayor shall have the following powers:

1. **Rule Making.** To prescribe such rules and regulations as may be deemed necessary or expedient for the conduct of administrative agencies subject to his authority, and to revoke, suspend or amend any rule or regulation of the administrative service by whomever prescribed;
2. **Investigation.** To investigate and to examine or inquire into, either by himself or by any officer or person designated for the purpose by him, the affairs or operation of any department, including the power to employ consultants and professional counsel when so authorized by the City Council to aid in such investigations, examinations, or inquiries;
3. **Overriding.** To set aside any action taken by a department head and to supersede him in the functions of his office; and
4. **Delegation.** To direct any department to perform the work for any other department, and to authorize any department head or officer responsible to him to appoint and remove subordinates serving under such person.

Section 3-304 Mayor Pro Tempore

During a temporary absence or disability of the Mayor, the City Council shall elect one (1) of its members to act as Mayor pro tempore, who during such absence or disability shall possess the powers of Mayor.

Section 3-305 Acting Mayor

In the event of a vacancy in the office of Mayor the City Council may appoint one (1) of its members as acting Mayor to serve until the vacancy is filled at a regular or special election as provided by law.

Section 3-306 Removal

The Mayor may be removed from office pursuant to Georgia Law.

Section 3-307 Procedure for Removal

Removal of any elected officer from office shall be brought about in accordance with *O.C.G.A.* § 45-11-4 and shall be brought in the Oglethorpe County Superior Court.

Section 3-308 Compensation

The Mayor shall receive compensation, expenses, and benefits as provided by ordinance and in accordance with Chapter 35, Title 36 of the *O.C.G.A.*

Article IV. THE CITY CLERK/TREASURER

Section 3-401 Election

The City Council shall at its first regular meeting after election and qualification elect/appoint a City Clerk/Treasurer.

Section 3-402 Term of Office

The City Clerk/Treasurer shall serve at the pleasure of the Mayor and Council, subject to removal for cause, and until his successor is elected and qualified.

Section 3-403 Bond

Before entering upon the duties of his office, the City Clerk/Treasurer shall give a good and sufficient bond, payable to the City Council, such bond to be fixed and approved by the City Council.

Section 3-404 Duties of City Clerk

The City Clerk/Treasurer shall have the following duties in his capacity as City Clerk:

1. To attend all meetings of the City Council;
2. To keep correct and full minutes of the proceedings of City Council together with all ordinances and resolutions passed by it, in a properly indexed book or register kept for that purpose;
3. To receive all applications or petitions made to the city and to place them before the Mayor and City Council at the meeting of the City Council next succeeding the receipt thereof;
4. To issue all licenses, and keep a record thereof, and all badges and permits authorized by the City Council;
5. To attend all sessions of the Municipal Court;
6. To keep an execution docket, in which he shall enter the names of all persons tried and fined by the Municipal Court, the nature of the offense, date of trial, amount of fine, and return of the police officer thereon;
7. To issue all summonses, processes, and subpoenas to witnesses that may be necessary in the enforcement

- of this code or other rules, regulations, and ordinances of the City Council;
8. To be the custodian of the city seal and affix its impression on documents whenever required; and
 9. To carefully preserve the records and documents belonging to the city which are not assigned to the custody of some other office, and to maintain a proper index to all such records and documents so that ready access thereto and use thereof may be had.

Section 3-405 Duties of City Treasurer

The City Clerk/Treasurer shall have the following duties in his capacity as City Treasurer:

1. To receive all money due the City Council, including taxes, licenses, fees, and other moneys belonging to the city and pay out the same only upon orders passed by the City Council and signed by the Mayor, or in his absence, the Mayor pro tempore;
2. To keep a book of accounts showing all money received on behalf of the city and the source and disposition thereof, which book shall be open for inspection by the public and members of the City Council;
3. To maintain a uniform system of accounts and keep such other records and accounts as may be required by statute or ordinance;
4. To furnish the City Council with quarterly statements detailing all receipts and payments of funds for the quarter; and
5. To enforce all laws of Georgia relating to the collection of delinquent taxes and sale or foreclosure for nonpayment of taxes to the city.

Section 3-406 Compensation

The City Council shall provide for the compensation of the City Clerk/Treasurer.

Article V. RESERVED

Article VI. OFFICERS AND EMPLOYEES

Section 3-601 The City Attorney

1. **Appointment and Qualifications.** The City Attorney shall be appointed by the Mayor, by and with the advice and consent of the City Council, and shall serve until a successor is appointed and has qualified. No person shall be so appointed unless he is a member in good standing of the State Bar of Georgia and has been actively engaged in the practice of law for at least three (3) years preceding his appointment.
2. **Oath.** Before entering upon the duties of his office, the City Attorney shall take the oath prescribed by this code for city officers.
3. **Powers and Duties.** The City Attorney shall be the legal advisor and representative of the city and in such capacity shall:
 - A. Advise the City Council or its committees or any city officer, when thereto requested, upon all legal questions arising in the conduct of city business;
 - B. Prepare or revise ordinances when so requested by the City Council or any committee thereof, and keep The Code of The City of Lexington up-to-date and properly indexed;
 - C. Give his opinion upon any legal matter or question submitted to him by the City Council, or any of its committees, or by any city officer;
 - D. Attend all meetings of the City Council as directed for the purpose of giving the City Council any legal advice requested by its members;
 - E. Prepare for execution all contracts and instruments to which the city is a party and approve, as to form, all bonds required to be submitted to the city;
 - F. Prepare, when authorized by the City Council, all charges and complaints against, and appear in the Municipal Court in the prosecution of every person charged with a violation of this code or city charter, and see to the full enforcement of all judgments or decrees rendered or entered in favor of the city;

- G. Represent and defend any and all suits and actions at law or equity brought against the city, unless otherwise directed by the City Council;
 - H. Make immediate reports to the Mayor and City Council of the outcome of any litigation in which the city has an interest;
 - I. Make an annual report to the Mayor and City Council of all pending litigation in which the city has an interest and the status thereof;
 - J. Have the power to adjust, settle, compromise or submit to arbitration, any action, causes of action, accounts, debts, claims, demands, disputes, and matters in favor of or against the city or in which the city is concerned as debtor or creditor, now existing or which may hereafter arise not involving or requiring payment to exceed an amount as determined by the Mayor and Council;
 - K. Keep complete and accurate records of the following, which records shall forever remain the property of the city:
 - (1) all suits in which the city had or has an interest, giving the names of the parties, the nature of the action, the disposition of the case or its status, if pending, and the briefs of counsel; and
 - (2) all written opinions prepared by the City Attorney and all certificates or abstracts of titles furnished by him to the city, or any department or official thereof.
 - L. Render such other legal services as may be required by the Mayor or City Council.
4. **Compensation.** The City Attorney shall submit to the City Council a monthly bill for his services, itemizing the type of work performed for the city and the number of hours engaged in each type of work during the month.

Section 3-602 The City Engineer

- 1. **Appointment.** The City Engineer shall be appointed by the Mayor, by and with the advice and consent of the City Council, and shall serve until a successor is appointed and has qualified.
- 2. **Oath.** Before entering upon the duties of his office, the City Engineer shall take the oath prescribed by this code for city officers.
- 3. **Duties.** The City Engineer shall advise the City Council and city officials on all engineering matters referred to him and shall, from time to time as required by the Mayor or City Council, make reports regarding public improvement, repairs of streets, bridges, and sidewalks, and prepare such other reports as the Mayor or City Council may request. He shall keep accurate maps, plats, and records of all public works, lands, or property owned by the city, and perform such other duties as may be imposed upon him by the Mayor or City Council.
- 4. **Compensation.** The City Engineer shall submit to the City Council a monthly bill for his services, itemizing the type of work performed for the city and the number of hours engaged in each type of work during the month.

Article VII. RESERVED

Article VIII. BOARDS, AGENCIES, AND COMMISSIONS

Section 3-801 Historic Preservation Commission

The City of Lexington has established a Historic Preservation Commission. See Chapter 39 for full text of the ordinance.

CHAPTER 4: REVENUE AND FINANCE

Section

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Article I.	TAXES
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Section 4-108 Gross Direct Premiums Tax

1. **Rate of Levy on Life, Accident, and Sickness Insurers.** There is hereby set and levied for the year 1991 and for each calendar year thereafter upon each company authorized to write life, accident, and sickness insurance and to write life, accident, and sickness insurance and which is doing business within the municipal corporate limits an annual tax equal to one percent (1%) of the annual gross direct premiums received during the preceding calendar year from policies insuring persons residing within the corporate limits of the municipality.

The term "gross direct premiums" as used in this section shall have the same meaning as that used in *O.C.G.A. § 33-8-4*. The tax levied by this subsection is in addition to any license fee imposed by this code.

2. **Rate of Levy on All Other Insurers.** There is hereby set and levied for the calendar year 1991, and for each calendar year thereafter, upon each insurance company not taxed under the provisions of the preceding subsection (1) and which is doing business within the municipal corporate limits, an annual tax equal to two and one-half percent (2.5%) of the annual gross direct premiums received during the preceding calendar year from policies insuring persons residing within the municipal corporate limits. The tax levied by this subsection is in addition to any license fee imposed by this code.
3. **Due Date and Required Report.** See *O.C.G.A. § 33-8-8.1*.
4. **False Information.** It is hereby declared to be a violation of this section for any person, firm, corporation, or agents thereof to knowingly give false or incomplete information on any report herein required to be filed.
5. **Confidentiality of Information.** All reports required to be filed under this section shall be confidential and the information contained therein shall be used solely by the officers of the city responsible for the administration of this section.
6. **Enforcement.** The taxes levied by this section may be enforced by execution in the same manner as other taxes of this municipality.

Section 4-109 Reserved

Section 4-110 Reserved

Section 4-111 Public Utility Franchise Tax

1. **Rate of Levy.** There is hereby set and levied on each electric light and power company, gas company, telephone and telegraph company, water company, and any other public utility making use of the streets, alleys, or other public ways or places in the City of Lexington for the purpose of rendering utility services, a franchise tax in the amount of three percent (3%) of the annual gross revenue received from residential commercial, and industrial sales.
2. **Due Date and Required Report.** The public utility franchise tax shall be paid on or before the twentieth (20th) day of the month following the calendar month in which the utility was provided and the sale was made, and payment by a report showing the volume of gross sales by service classification (residential, commercial, industrial) for said preceding month.

Section 4-112 Reserved

Section 4-113 Reserved

Section 4-114 Reserved

Section 4-115 Occupation Tax

1. **Occupation Tax Required; Occupation Tax Required for business Dealing In the City.**
 - A. For the year 1995 and succeeding years thereafter, each person engaged in any business, trade, profession, or occupation in Lexington, Georgia, whether with a location in Lexington or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the

state pursuant to *O.C.G.A. § 48-13-7*, shall pay an occupation tax for said business, trade, profession, or occupation; which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in Lexington, Georgia. If the taxpayer has no permanent business location in Lexington, Georgia, such business tax registration shall be shown to the City Clerk or his/her designee or to any police officer of said, Lexington, Georgia, upon request.

2. Construction of Terms; Definitions.

A. As used in this section, the term:

- (1) Administrative fee means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.
- (2) In towns or cities means within one (1) mile of villages, towns, or cities.
- (3) Location of office shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office.
- (4) Occupation tax means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business and enacted by a local government as a revenue-raising ordinance or resolution.
- (5) Regulatory fees mean payments, whether designated as license fees, permit fees, or by another name, which are required by local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government. A regulatory fee may not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph (8) of Code Section 36-71-2 or other costs or conditions of zoning or land development.
- (6) Dominant line means the type of business, within a multiple-line business, that the greatest amount of income is derived from.
- (7) Person shall be held to include sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization, but specifically excludes charitable nonprofit organizations which utilize fifty percent (50%) of their proceeds for charitable purposes.
- (8) Practitioner of profession or occupation is one who by state law requires state licensure regulating such profession or occupation.
- (9) Practitioners of professions and occupations shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (10) 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.
- (11) Gross receipts means total revenue of the business or practitioner for the period, including without being limited to the following:
 - (a) Total income without deduction for the cost of goods sold or expenses incurred;
 - (b) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - (c) Proceeds from commissions on the sale of property, goods, or services;
 - (d) Proceeds from fees charged for services rendered; and
 - (e) Proceeds from rent, interest, royalty, or dividend income.
- (12) Gross receipts shall not include the following:
 - (a) Sales, use, or excise taxes;
 - (b) Sales returns, allowances, and discounts;
 - (c) Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(1), between or among the units of a brother-sister controlled

group of corporations, as defined by 26 U.S.C. Section 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;

- (d) Payments made to a subcontractor or an independent agent;
- (e) Governmental and foundation grants, charitable contributions, or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute eighty percent (80%) or more of the organization's receipts; and
- (f) Proceeds from sales to customers outside the state.

3. Occupation Tax Levied; Restrictions.

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

- (1) The number of employees of the business or practitioner.

B. Occupation tax schedule.

- (1) The tax rate determined by number of employees for each business, trade, profession, or occupation is as follows:

<u>Employees</u>	<u>Tax Liability</u>
1-100	\$10.00

C. No export tax shall be imposed upon any item manufactured or produced in this state and shipped by the manufacturer or producer for sale outside the state.

D. No county, municipality, or district shall levy or collect any capitation tax whatsoever, except street tax.

E.

- (1) It shall be unlawful for the state or any county, municipality, airport authority, district, or other political subdivision to levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on:
 - (a) Persons traveling in air commerce, whether on regularly scheduled commercial airlines, chartered air flights, or in privately owned civil aircraft;
 - (b) The carriage of persons traveling in air commerce; or
 - (c) The sale of air transportation or on the gross receipts derived from air transportation.
- (2) This Code section shall not be construed to prohibit the state or any county, municipality, airport authority, district, or other political subdivision:
 - (a) From levying or collecting any property, income, franchise, sale, use, or other tax otherwise authorized by law; or
 - (b) Which owns or operates an airport from levying or collecting reasonable rental charges, landing fees, license fees, permit fees, and other service charges for the use of airport facilities and related facilities from aircraft owners, operators, persons selling or providing goods or services to the owners or operators or to the public, and others, when otherwise allowed by law.

4. Paying Occupation Tax of Business with No Location in Georgia.

A. The governing authority of each county is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with no location or office in the state in accordance with this Code section and to provide for the punishment of violation of such a local ordinance or resolution.

B. The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and of such a local ordinance or resolution if the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the corporate limits 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 in the corporate limits.
- C. This article supersedes any provisions of local law or city charter authorizing such taxes.
 - D. Local governments levying occupation tax according to section 4-115(5). shall comply with *O.C.G.A. §§ 48-13-10 through 48-13-13*, except that: gross receipts of a business or practitioner for purposes of this Code section shall include only those gross receipts reasonably attributable to sales or services in this state; employees shall include only those employees engaged in substantial efforts within this state; and nation-wide profitability ratios shall apply only to types of business transacted within this state.
 - E. Businesses and practitioners subject to Section 4-115(5). shall be required to pay occupation tax to only one (1) local government in this state, the local government for the municipal corporation or county in which the largest dollar volume of business is done or service is performed by the individual business or practitioner.
 - F. If a business or practitioner subject to Section 4-115(5). provides to the local government in this state which is authorized to levy occupation tax on such business or practitioner proof of payment of a local business or occupation tax in another state which purports to tax the business's or practitioner's sales or services in this state, the business or practitioner shall be exempt from local occupation tax in this state.
5. **Business With One or More locations in Georgia.**
- A. Except as to those businesses and practitioners of professions and occupations excluded by subsection (a) of Code Section 48-13-16, the governing authority of each municipal corporation is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations which have one or more locations or offices within the corporate limits and to provide for the punishment of violation of such a local ordinance or resolution. The governing authority of each municipal corporation is authorized to classify businesses and practitioners of professions and occupations and to assess different taxes on different classes of businesses and practitioners. The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for requiring information from businesses and practitioners of professions and occupations doing business within the corporate limits regarding the site of any location or office and payment of occupation taxes or regulatory fees to other local governments and to provide for the punishment for violation of such a local ordinance or resolution. This article supersedes any provision of local law or city charter authorizing such taxes.
 - B. After the effective date of this Act, any local government shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax.
6. **Each Line of Business to Be Identified on Business Registration.** The business registration of each business operated in the City shall identify the dominant lines of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the City Clerk's Office and that line of business being noted by the City Clerk upon the business registration form which is to be displayed by the business owner.
7. **The Number of Businesses Considered to Be Operating In the City.** Where a person conducts business at more than one (1) fixed location, each location or place shall be considered a separate business for the purpose of occupation tax.
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 one of the following:
- A. The occupation tax based on Number of Employees.
 - B. A fee of one hundred dollars (\$100.00) per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per-practitioner fee applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.

- C. This election is to be made on an annual basis and must be done prior to January 1 each year.
9. **Practitioners Exclusively Practicing for a Government.** Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, instrumentalities of the United States, the state, or a municipality or county of the state shall not be required to obtain a license or pay an occupation tax for that practice.
10. **Purpose and Scope of Tax.** The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade, or calling. The occupation tax only applies to those businesses and occupations which are covered by the provisions of *O.C.G.A.* §§ 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.
11. **When Tax Due and Payable; Effect of Transacting Business When Tax Delinquent.**
- A. Each such occupation tax shall be for the calendar year 1995 and succeeding calendar years thereafter unless otherwise specifically provided. Said registration and occupation tax shall be payable January 1 of each year and shall, if not paid by January 31 of each year, be subject to penalties for delinquency as prescribed in this section. On any new profession, trade, or calling begun in the city in 1995 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business and a twelve percent (12%) penalty imposed. The tax registration herein provided for shall be issued by the City Clerk's Office and if any person, firm, or corporation whose duty it is to obtain a registration shall, after said registration or occupation tax becomes delinquent, transact or offer to transact, in Lexington of the kind of profession, trade, or calling subject to this ordinance without having first obtained said registration, such offender shall, upon conviction by the Municipal Court Judge, be punished by a fine not to exceed one hundred dollars (\$100.00), or imprisonment not to exceed thirty (30) days, either or both in the discretion of the presiding judge.
- B. In addition to the above remedies, the city may proceed to collect in the same manner as provided by law for tax executions.
12. **Exemption on Grounds That Business is Operated for Charitable Purposes.** No business on which a business registration or occupation tax is levied by this Ordinance shall be exempt from said registration or tax on the ground that such business is operated for a charitable purpose, unless fifty-one percent (51%) or more of the entire proceeds from said business are devoted to such purpose.
13. **Evidence of State Registration Required If Applicable; State Registration to Be Displayed.**
- A. Each person who is licensed by the Secretary of State pursuant to Title 43 of the *O.C.G.A.* shall provide evidence of proper and correct state license before the city registration may be issued.
- B. Each person who is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.
14. **Evidence of Qualification Required If Applicable.** Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency, or any other regulatory matter shall first, before the issuance of a city business registration, show evidence that such requirements have been met.
15. **Liability of Officers and Agents; Registration Required; Failure to Obtain.** All persons subject to the occupation tax levy pursuant to this ordinance shall be required to obtain the necessary registration for said business as described in this ordinance, and in default thereof the officer or agent soliciting for or representing such persons shall be subject to the same penalty as other persons who fail to obtain a registration. Every person commencing business in the city after January 1 of each year shall likewise obtain the registration herein provided for before commencing the same; and any person transacting, or offering to transact in the city, any of the kinds of business, trade, profession, or occupation without first having so obtained said registration, shall be subject to penalties provided thereof.
16. **When Registration and Tax Due and Payable; Effect of Transacting Business When Tax Delinquent.**
- A. Each such registration shall be for the calendar year in which the registration was obtained unless otherwise specifically provided. There is hereby imposed a penalty upon each business which fails to apply for and obtain an appropriate business registration and pay all tax and fees as provided herein before February 1 of each year, and on February 1 each year hereafter. Every person commencing business in the city after January 1 of each year shall obtain the registration required before commencing such business. Any person transacting or offering to transact in the

city any business, trade, profession, or occupation without first having obtained said registration shall be subject to the penalties provided in section 4-114(16). Said penalties shall be in addition to all other penalties, civil and criminal herein provided; and may be collected by the remedies herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

- B. The registration herein provided for shall be issued by the City Clerk's Office, and if any person, firm, or corporation whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact, in the city, any of the kind of business, trade, profession, or occupation without having first obtained said registration, such offender shall be subject to the penalties provided thereof.
17. **Penalty.** Any person violating any provisions of this ordinance shall, upon conviction before the city judge, be fined in an amount not exceeding one hundred dollars (\$100.00) or imprisoned not exceeding thirty (30) days, either or both, in the discretion of the Municipal Court judge.
18. **Subject to Regulatory Fees.** The following businesses or practitioners of professions or occupations may be subject to regulatory fees of local governments, but are expressly not limited to, the following:
- A. Building and construction contractors, subcontractors, and workers;
 - B. Carnivals;
 - C. Taxicab and limousine operators;
 - D. Tattoo artists;
 - E. Stables;
 - F. Shooting galleries and firearm ranges;
 - G. Scrap metal processors;
 - H. Pawnbrokers;
 - I. Food service establishments;
 - J. Dealers in precious metals;
 - K. Firearms dealers;
 - L. Peddlers;
 - M. Parking lots;
 - N. Nursing and personal care homes;
 - O. Newspaper vending boxes;
 - P. Modeling agencies;
 - Q. Massage parlors;
 - R. Landfills;
 - S. Auto and motorcycle racing;
 - T. Boarding houses;
 - U. Businesses which provide appearance bonds;
 - V. Boxing and wrestling promoters;
 - W. Hotels and motels;
 - X. Hypnotists;
 - Y. Handwriting analysts;
 - Z. Health clubs, gyms, and spas;
 - AA. Fortunetellers;
 - BB. Garbage collectors;
 - CC. Escort services;
 - DD. Burglar and fire alarm installers; and
 - EE. Locksmiths.
19. **Not Subject to Regulatory Fees.** Businesses and practitioners of professions and occupations which local governments are not authorized to subject to regulatory fees include, but are expressly not limited to, the following:
- A. Lawyers;
 - B. Physicians licensed under Chapter 34 of Title 43;
 - C. Osteopaths licensed under Chapter 34 of Title 43;
 - D. Chiropractors;
 - E. Podiatrists;
 - F. Dentists;

- G. Optometrists;
 - H. Psychologists;
 - I. Veterinarians;
 - J. Landscape architects;
 - K. Land surveyors;
 - L. Practitioners of physiotherapy;
 - M. Public accountants;
 - N. Embalmers;
 - O. Funeral directors;
 - P. Civil, mechanical, hydraulic, or electrical engineers;
 - Q. Architects;
 - R. Marriage and family therapists, social workers, and professional counselors;
 - S. Dealers of motor vehicles, as defined in paragraph (1) of Code Section 10-1-622; and
 - T. Any other business, profession, or occupation for which state licensure or registration is required by state law, unless the state law regulating such business, profession, or occupation specifically allows for regulation by local governments.
20. **Subpoena and Arrest Powers.** The Sheriff and his duly designated officers and inspectors or their successors shall be classified as Deputy Marshall-Business Inspectors with full subpoena and arrest powers in conjunction with any violation pertaining to this section for 1995 and succeeding years.
21. **Businesses Not Covered.** The following businesses are not covered by the provisions of this Section but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the State of Georgia or by local law:
- A. Those businesses regulated by the Georgia Public Service Commission.
 - B. Those electrical service businesses organized under Chapter 3 of Title 46 of the *O.C.G.A.*
 - C. Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.
 - D. Cooperative marketing associations governed by *O.C.G.A.* § 2-10-105.
 - E. Insurance companies governed by *O.C.G.A.* § 33-8-8, et seq.
 - F. Motor common carriers governed by *O.C.G.A.* § 46-7-15.
 - G. Those businesses governed by *O.C.G.A.* § 48-5-355.
 - H. Agricultural products and livestock raised in the state of Georgia governed by *O.C.G.A.* § 48-5-356.
 - I. Depository financial institutions governed by *O.C.G.A.* § 48-6-93.
 - J. Facilities operated by a charitable trust governed by *O.C.G.A.* § 48-013-55.
22. **Occupation Tax Inapplicable Where Prohibited by Law or Provided for Pursuant to Other Existing Law.** An occupation tax shall not apply to a business where such levy is prohibited or exempted by the laws of Georgia or of the United States. This section shall not be construed to limit the City's ability to levy an occupation tax, registration fee, or regulatory fee for any business or practitioner of professions or occupations as authorized by other State Laws or local ordinances and not covered by *O.C.G.A.* §§ 48-13-5 to 48-13-26.
23. **When Occupation Tax Due and Payable.** The amount of occupation tax shall be payable to the said city, at the City Clerk's Office on January 1 each year and delinquent if not paid on or before January 31 each year.
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 employees from commencing date to the end of the calendar year and such tax shall be paid. Said tax due the city shall be prorated based on a quarterly basis for any portion of the year yet remaining.
25. **More than One Place or Line of Business.** Where a business is operated at more than one place or where the business includes more than one line, said business shall be required to obtain the necessary registration for each location and line and pay an occupation tax in accordance with the prevailing taxing method and tax rate for each location and line.
26. **Transfers of Occupational Tax Certificate, Personnel.** No tax certificate may be transferred from one person to another. Additions to or deletions from the ownership of a business, which do not affect the

- liability of the principal ownership of a business for which the certificate is issued, may be made without canceling the old occupational tax certificate and applying for a new certificate.
27. **Inspections of Books and Records.** In any case, the city, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made to determine the accuracy of the return as herein provided. The city shall have the right to inspect the books or records for the business of which the return was made in the city, and upon the demand of the city, 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 registration currently existing to do business in the city. Adequate records shall be kept in the city for examination by the city at its officer's discretion.
28. **Effect of Failure to Comply with Ordinance Provisions; Continuing in Business after Tax Registration Revocation.** Any persons, their managers, agents, or employees, who do business in said city after the registration for said business has been revoked as above, hereby required to make occupation tax returns, and who fail to make said returns within the time and in the manner herein provided, who refuse to amend such returns so as to set forth the truth, or who shall make false returns; and any person, their managers, agents, or employees who refuse to permit an inspection of books in their charge when the officer, agents, employees, or representatives of the city request such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties provided herein. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the local government as in the case of delinquent occupation tax. These penalties shall consist of a fine of one hundred dollars (\$100.00).
29. **Lien Taken for Delinquent Occupation Tax.** In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the City, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the persons, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of twelve percent (12%) per annum from the date when such tax or installment becomes delinquent, and lien shall cover the property in the city of the person, partnership, or corporation liable for said tax, all as provided by the ordinances and charter of said city and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the Police Chief or other appropriate officer of said city upon the property of defendant located in said jurisdiction, and sufficient property shall be advertised and sold to pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by ordinances and charter of said city and the laws of Georgia, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the City Clerk's Office against any person defaulting on the occupation tax, the person against whom the entry was made shall not be allowed or entitled to have or collect any fee 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 is issued, pays the tax in full together with all interest and cost accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the taxes.
30. **Amendment, Repeal Provision.** This Section shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the Mayor and Council to access and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amount of tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the jurisdiction of additional occupation taxes upon the same person, property, or business.
31. **Applications of Provisions to Prior Ordinance.** This section 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 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.

- 32. **Provisions for Non-Payment.** A person engaged in any business, trade profession, or occupation in the city whether with a location in the city or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to *O.C.G.A. § 48-13-7*, will not be allowed to pay an occupational tax for a new calendar year until all outstanding or delinquent balances of ad valorem taxes, regulatory fees, or any other form of taxes are paid. The non-payment of this occupational tax will prohibit a business to continue its operation until all such outstanding balances are paid.
- 33. **Enforcement of Provisions.** It is hereby made the duty of the City Clerk and/or the Chief of Police to see that the provisions of the section relating to occupation taxes are observed; and to summon all violators of the same to appear before the court. It is hereby made the further duty of the City Clerk's Office, Chief of Police, members of the police department, and their assistants to inspect all registrations issued by the city as often as in their judgment it may seem necessary to determine whether the registration held is the proper one for the business sought to be transacted thereunder.
- 34. **Provisions to Remain in Full Force and Effect Until Changed by the Mayor and Council.** The section shall remain in full force and effect until changed by amendment adopted by the Mayor and Council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.
- 35. **Requirement of Public Hearing before Tax Increase.** After January 1, 1996, the Mayor and Council shall conduct at least one (1) public hearing before adopting any ordinance or resolution which will increase the rate of occupation tax as set forth in this ordinance.
- 36. **Option to Establish Exemption or Reduction in Occupation Tax.** The Mayor and Council may, by subsequent ordinance or resolution, provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions. Such exemption or reductions in occupation tax shall not be arbitrary or capricious.
- 37. **Conflicts between Specific and General Provisions.** Where there is an apparent conflict in this section between specific and general provisions, it is the intention hereof that the specific shall control.
- 38. **Duty to Post State Licenses.** Each person subject to any special or occupation tax who is also licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.
- 39. **Severability.** If any section, provision, or clause of any part of this section shall be declared invalid or unconstitutional, or if the provisions of any part of this section as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this section not so held to be invalid, or the application of this section to other circumstances not so held to be invalid. It is hereby declared as the intent that this section would have been adopted had such invalid portion not been included herein.

Section 4-116 **Reserved**

Article II. **RESERVED**

Article III. **BUDGET**

Section 4-301 **Fiscal Year**

The city shall operate on a fiscal year which shall begin on the first day of July and end on the last day of June.

Article IV. **PURCHASING**

Section 4-401 **Required Check Signature**

Each check must be signed by two persons, the City Clerk and one council person, as authorized by resolution of the City Council.

CHAPTER 5: RESERVED

CHAPTER 6: RESERVED

CHAPTER 7: RESERVED

CHAPTER 8: RESERVED

CHAPTER 9: RESERVED

PART II: PUBLIC HEALTH AND SAFETY

CHAPTER 10: FIRE PREVENTION AND PROTECTION

Section

10-101	Reserved
10-102	Fire Protection Fees
10-103	Georgia Forestry Commission Cooperative Lease Agreement for Rural Fire Defense
10-104	Memorandum of Understanding for Rural Fire Defense



Section 10-101 Reserved

The State Minimum Fire Safety Standards shall have state-wide effect and shall not require adoption by the City of Lexington. The City of Lexington is authorized to enforce these standards on all buildings and structures except one-family and two-family dwellings and those structures listed in *O.C.G.A. § 25-2-13*. Notwithstanding any other provision of law or any local ordinance to the contrary, in the event of a conflict between any code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) and of the Standard Building Code Congress (Southern Standard Building Code), the code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) shall prevail. The order of precedence established by this subsection shall apply to all buildings and structures whether or not such buildings and structures are covered under this Code section.

Section 10-102 Fire Protection Fees

The City of Lexington Fire Department will not answer a call to a structure outside the city limits unless an annual fee of twenty-five dollars (\$25.00) has been paid and is current.

(Adopted 6/88)

The annual fee must be renewed by July 15, 1988.

Section 10-103 Georgia Forestry Commission Cooperative Lease Agreement for Rural Fire Defense

This agreement, made and entered March 31, 1972 by and between Georgia Forestry Commission, an agency of the State of Georgia, hereinafter referred to as "Commission", and the Lexington Fire Department hereinafter referred to as "Cooperator".

1. The Cooperator agrees:
 - A. To equip, outfit, paint, and place said equipment in active fire service within a six-month period from date of delivery;
 - B. To respond with said equipment, adequately manned, to all fire calls, within three (3) mile radius when requested to do so, local conditions permitting;
 - C. To operate said equipment at no cost to the State;
 - D. To make said equipment available for inspection by the Commission at any time;
 - E. To obtain liability insurance to cover the operation of said equipment
2. The Parties mutually agree:
 - A. Title to the equipment shall remain the State;
 - B. The equipment may not be sold, junked or traded, but must be returned to the Commission for final disposition;
 - C. A State license tag, furnished by the Commission, shall be affixed to all vehicles;
 - D. All equipment is limited to fire use and the use of water in the public interest under unusual or emergency conditions;

- E. Title to all accessories, tools, etc. added by the Cooperator shall remain in the Cooperator and may be removed prior to returning the equipment.
- F. A decal, furnished by the Commission, shall be affixed to the equipment in a prominent and proper location visible to the public stating that it is lent by Georgia Forestry Commission.
- G. An employee of the Cooperator or other person enlisted by the Cooperator to man said equipment shall not be considered an employee of the Commission for any purpose. The Cooperator shall have the responsibility for any Workmen's Compensation Claim instituted by any person manning said equipment at the request of the Cooperator;
- H. This agreement shall not supersede any prior agreement between the parties for the coordinated protection of uncontrolled fire on any forest lands within Oglethorpe County.
- I. The Commission shall have the right to recall said equipment at any time and substitute therefore different equipment of similar specifications;
- J. This agreement shall be effective from the date first appearing above and shall continue in force from year to year, not to exceed fifty (50) years, unless terminated by either party by thirty (30) days written notice to the other.

Section 10-104 Memorandum of Understanding for Rural Fire Defense

- 1. Because of the intermingling of structures and natural cover fuels in areas of Oglethorpe County, the objectives of the City of Lexington Fire Department and the Georgia Forestry Commission are inseparable, to minimize the loss of life and property as a result of uncontrolled fire. We, the undersigned, have arrived at this memorandum of understanding for these primary purposes:
 - A. Provide for closest possible cooperation on mutual objectives.
 - B. Prevent misunderstandings as to purpose and responsibilities of each organization.
 - C. Make possible effective support between organizations.
- 2. **Fire Department.**
 - A. Area Covered: City and 3 mile radius
 - B. Source of Funds: City
 - C. Facilities
 - (1) Equipment: 1 pumper
 - (2) Manpower: 14 active
- 3. **Forestry Commission.**
 - A. Area Covered: The County of Oglethorpe, except for incorporated areas, federal lands not under specific agreement, and coastal islands which do not have highway access.
 - B. Source of Funds: Primarily state appropriations, supplemented by county fire control assessments and federal matching funds.
 - C. Facilities:
 - (1) Equipment: 2 tractor-transport, pickup
 - (2) Manpower: 1 forester, 3 patrolman
 - D. Responsibilities: To provide reasonable basic protection from uncontrolled fire; to encourage and assist landowners in the use of accepted forestry practices; and to aid in the reforestation of idle forest lands.
- 4. **Operational Procedures.**
 - A. **Dispatching.**
 - (1) The Forestry Commission will dispatch a crew to any known forest/brush/grass/etc. fire, or to any fires of unknown character.
 - (2) The Fire Department will dispatch a crew to any known building/residence/structure/etc. fire, or to any fire of unknown character.
 - B. **Communications.**
 - (1) The Forestry Commission will immediately advise the Fire Department of any burning or threatened structure within the area.
 - (2) The Fire Department will immediately advise the Forestry Commission of any burning or threatened natural cover fuels within the area.
 - C. **Mutual Assistance.**
 - (1) **Suppression.** When both agencies are at the same fire, the overall supervisory

responsibility shall lie with the agency concerned most directly with what is burning. If both woods and structures are on fire simultaneously, each agency shall attend its normal responsibility, and/or play a supporting role to the other.

- (2) **Training.** Each agency agrees to attend/participate/assist/etc. in the other agency's training program.
- (3) **Other.** Each agency agrees to lend its support to programs of the other which will increase the public awareness of the hazard and destruction of fire and/or make the objectives of this memorandum possible.

- 5. **Agreement.** This memorandum shall be effective when signed by both parties. It continues in effect unless and until either party gives thirty (30) days notice in writing to the other party.

(Signed 3/29/72)

CHAPTER 11: TRAFFIC CONTROL

Section

11-101 Uniform Rules of the Road
11-102 Speed Limit



Section 11-101 Uniform Rules of the Road

1. **Adoption By Reference.** Pursuant to Chapter 6, Title 40 of *O.C.G.A.* § 40-6-372 through 40-6-376, §§ 40-6-1 to 40-6-395 (except for §§ 40-6-393 and 40-6-394), and Chapter 2, Title 40 of *O.C.G.A.* § 40-2-20 and Chapter 5, Title 40 of *O.C.G.A.* § 40-5-20, known as the Uniform Rules of the Road and the definitions contained in *O.C.G.A.* § 40-1-1 are hereby adopted as and for the traffic regulations of this municipality with like effect as if recited herein.
2. **Penalties.** Unless another penalty is expressly provided by law, any person convicted of a violation of any provision of this code section shall be punished by a fine of not more than one hundred dollars (\$100.00) or imprisonment for not more than ninety (90) days or by both such fine and imprisonment.
3. Pursuant to *O.C.G.A.* § 4-5-121, the municipal court of the City of Lexington shall be authorized to impose punishment in accordance with Georgia Law for convictions of driving while a license is suspended or revoked.

Section 11-102 Speed Limit

Pursuant to Section 40-6-183 of the Official Code of Georgia Annotated concerning Local Authorities power to alter lawful speed limits, the following ordinance regulating speed limits within the City of Lexington, Georgia is adopted.

Be it ordained by the City of Lexington, Oglethorpe County, Georgia that the following speed zones are hereby established based on an engineering and traffic investigation as prescribed by law.

1. **On System.**
 - A. State Route 10 from the Lexington city limit (M.L. 8.23) 0.01 mi. east of State Route 22 to County Road #163-Black Bottom Road (M.L. 8.64), a distance of 0.41 mi. to be zoned 35 mph.
 - B. State Route 10 from County Road #163-Black Bottom Road (M.L. 8.64) to City Street #604-Meson Street (M.L. 8.92), a distance of 0.28 mi. to be zoned 30 mph.
 - C. State Route 10 from City Street #604-Meson Street (M.L. 8.92) to State Route 77 (M.L. 9.12), a distance of 0.20 mi. to be zoned 35 mph.
 - D. State Route 10 from State Route 77 (M.L. 9.12) to the Lexington city limit (M.L. 9.32) 0.02 mi. east of City Street #606-Dupree Street, a distance of 0.20 mi. to be zoned 45 mph.
 - E. State Route 77 from the Lexington city limit (M.L. 15.98) 0.05 mi. south of City Street #601-Boggs Street to State Route 10 (M.L. 16.19), a distance of 0.21 mi. to be zoned 45 mph.
 - F. State Route 77 runs common with State Route 10 from (M.L. 16.19) to (M.L. 16.78), a distance of 0.59 mi.
 - G. State Route 77 from State Route 10 (M.L. 16.78) to a point 0.02 mi. south of City Street #607-Academy Street (M.L. 16.98), a distance of 0.20 mi. to be zoned 35 mph.
 - H. State Route 77 from a point 0.02 mi. south of City Street #607-Academy Street (M.L. 16.98) to the Lexington city limit (M.L. 17.20) 0.20 mi. north of City Street #607-Academy Street, a distance of 0.22 mi. to be zoned 45 mph.
 - I. Signs to be erected by the Georgia Department of Transportation.

(Adopted 2/8/96)

CHAPTER 12: RESERVED

CHAPTER 13: RESERVED

CHAPTER 14: RESERVED

PART III: PUBLIC WORKS AND PROPERTY

CHAPTER 15: RESERVED

CHAPTER 16: RESERVED

CHAPTER 17: RESERVED

CHAPTER 18: RESERVED

CHAPTER 19: RESERVED

CHAPTER 20: WATER SERVICE

Section

20-101	Water Superintendent; Other Employees
20-102	Duties
20-103	Meters
20-104	Ownership and Maintenance
20-105	Tap-on Charge
20-106	Installation Charge
20-107	Deposit
20-108	Returned Checks
20-109	Water Rates
20-110	Collection of Delinquent Water Bills
20-111	Disconnection for Non-payment
20-112	Reconnection
20-113	Waste
20-114	Water Shortage or Scarcity
20-115	Use During Fire Alarm
20-116	Contractors; Damages to System
20-117	Compliance with Sanitary Code
20-118	Clean Water Ordinance
20-119	Swimming Pools



Section 20-101 Water Superintendent

The City may provide by contract for a Water Superintendent.

Section 20-102 Duties

1. Develop and promulgate rules and regulations for water cutoff procedures, as approved by Mayor and Council, for delinquent water customers.
2. Develop construction specifications.
3. Enforce both the rules and specifications.
4. Supervise any worker or workers.
5. Do routine maintenance on the water system.
6. Recover damages when contractors or other persons damage any part of the water system.
7. Replace malfunctioning meters.
8. Remove meters where necessary to prevent revenue losses from delinquent water customers.
9. Connect meters for new water customers.
10. Reconnect meters for previous water customers.
11. Be responsible for all other activities necessary for efficient operation of the water system except those activities preempted by the Mayor and Council.
12. Perform all other duties required of the water supervisor by the Mayor and Council.

Section 20-103 Meters

Each individual dwelling or other building must have its own meter; no two dwellings or other buildings may share a meter.

A building or structure, or a part of a building or structure, shall be considered an "individual dwelling or other building" for the purpose of Section 20-103, whenever it has its own individual gas and/or electric meter. Therefore, a building or structure is required to have a water meter and a separate water account for each part of said building or structure which has its own individual gas and/or electric meter.

Section 20-104 Ownership and Maintenance

The City of Lexington shall own and maintain all parts of the water system from the water main through the meter; the water customers shall own and maintain that part of the system from the meter to the premises served.

Section 20-105 Tap-on Charge

Tap-on charges shall be established from time-to-time by resolution of the Mayor and Council.

Section 20-106 Installation Charge

Installation charges shall be established from time-to-time by resolution of the Mayor and Council.

Section 20-107 Deposit

Water deposits for new accounts shall be one hundred dollars (100.00) and shall also be required for property renters or for property owners who have had service disconnected for non-payment. Deposit shall be returned to the customer after twelve (12) consecutive timely payments. The deposit is refundable in full upon discontinuance of service if all charges due the city for water services have been paid, but in the event that the customer becomes in arrears in such charges, then the deposit shall be used in whole or in part in liquidation of the arrearage, and the deposit by the customer shall be construed as consent to such use.

Section 20-108 Returned Checks

There is a twenty-five dollars (\$25.00) service charge on returned checks collected from water customers.

Section 20-109 Water Rates

Water rates shall be set from time to time by resolution of the Mayor and Council.

Section 20-110 Collection of Delinquent Water Bills

Water bills unpaid by the 20th of each month may be collected in the same manner as delinquent taxes, except that a ten percent late charge shall be added to bills not paid by the 20th of each month and for each month the bills remain unpaid.

Section 20-111 Disconnection for Non-payment

Water bills are sent out at the first of the month. Bills not paid by the 20th of the month incur a late charge of ten percent of the amount of the bill. Accounts remaining unpaid by the 5th day of the following month are subject to being disconnected. To avoid disconnection, all outstanding amounts for water service, including past due amounts, currently due amounts and late fees must be paid in full.

Section 20-112 Reconnection

A charge for reconnection or water service shall be established from time-to-time by resolution of the Mayor and Council.

Section 20-113 Waste

It is the duty of each citizen to report any leaks or other waste of water.

Section 20-114 Water Shortage or Scarcity

1. In case of a water shortage or scarcity, the Mayor and Council may restrict the use of water.
2. Persons who violate any such restriction may be fined up to one hundred dollars (\$100.00) or upon refusal or failure to pay the amount fined may be imprisoned for up to ten (10) days.

Section 20-115 Use During Fire Alarm

During all fire alarms the use by persons other than firefighters of hoses and other apparatuses maintaining a constant flow of water shall be unlawful.

Section 20-116 Contractors; Damages to System

When a person working in the City of Lexington breaks a water line, the person must pay the entire amount of repairs.

Section 20-117 Compliance with Sanitary Code

No new tap-ons will be permitted until the proposed water user has provided the water supervisor with evidence that the property is in compliance with the sanitary laws, rules, and regulations of the State of Georgia.

(Amended 10/10/91, 7/13/95, 12/11/97)

Section 20-118 Clean Water Ordinance

The digging or drilling of wells, as well as the supplying of water from such wells to sites in the City of Lexington shall be permitted; however, any supplier of water, who supplies more than one site, at least one of which lies within the limits of the City of Lexington, Georgia shall be required to obtain and keep valid a permit from the Georgia Environmental Protection Division.

For the purpose of this ordinance, "supplier" shall refer to any individual, partnership or company, and "site" shall refer to any single-family dwelling; any single-family apartment or room in a multi-family dwelling, if supplied with an individual electric or gas meter; or any business, if supplied with an individual electric or gas meter.

The penalty for failure to obtain and maintain an EPD permit, as required by this ordinance, shall be one hundred dollars (\$100.00) per month, for each site supplied within the city limits.

(Adopted 1/8/98)

Section 20-119 Swimming Pools

1. Swimming pools outside city service area will be filled only if there is an adequate supply of water. This will be determined by water supervisor.
2. There will be a fifty dollar (\$50.00) service charge to all pools filled outside service area. (Supervisors compensation).
3. There will be a two dollar (\$2.00) per thousand gallons of water charged. Volume of water shall be figured

- by pool measurements; length time width times depth at deepest point.
4. Residents within service area will pay same fees if separate hook-ups are made to hydrants.

(Adopted 9/9/93)

CHAPTER 21: RESERVED

CHAPTER 22: RESERVED

CHAPTER 23: RESERVED

CHAPTER 24: RESERVED

CHAPTER 25: RESERVED

CHAPTER 26: RESERVED

CHAPTER 27: RESERVED

CHAPTER 28: RESERVED

CHAPTER 29: RESERVED

PART IV: GENERAL GOVERNMENTAL REGULATIONS

CHAPTER 30: DANGEROUS DOG ORDINANCE

Section

30-101	Definitions
30-102	Dog Control Officer
30-103	Duties of the Dog Control Officer
30-104	Complaints
30-105	Identification and Inoculation
30-106	Classification of Potentially Dangerous, Dangerous Dogs and Vicious Dogs; Notice to Owner Required
30-107	Liability of Owner
30-108	Hearings; Presiding Body and Procedure
30-109	Certificate of Registration Required
30-110	Annual Registration Fee
30-111	Guard Dogs
30-112	Disposition of Dogs Found to be in Violation
30-113	Redemption of Impounded Dogs
30-114	Disposition of Dog Demonstrating an Imminent Threat
30-115	Defense of Person or Property
30-116	Abandonment of Dogs
30-117	Records
30-118	Liability of County Officers, Agents and Employees
30-119	Violations
30-120	Penalty for Violations
30-121	Obstruction of Officer



Section 30-101 Definitions

The following words, terms, and phrases shall have the meanings ascribed to them in Georgia Law O.C.G.A. 4-8-20 through O.C.G.A. § 4-8-4 5, except where context clearly indicates a different meaning.

1. **Abandonment.** The act of losing a dog, or disposing of a dog, or leaving a dog behind and making no attempt to retrieve it; or by any other act manifesting a complete disclaimer of ownership or a dog.
2. **Dog Control Officer** shall refer to the Oglethorpe County Code Enforcement Officer, certified local law enforcement officers, or any person(s) so designated by the Mayor of the City of Lexington to perform the duties of enforcing this Ordinance and to perform the duties of Dog Control Officer(s).
3. **Dangerous Dog Ordinance.** This Ordinance may be referred to by such short title.
4. **Dangerous Dog.** Any dog that, according to the records of an appropriate authority:
 - A. Inflicts a severe injury on a human being or domesticated animal without provocation on public or private property at any time after this Ordinance has been approved and executed; or
 - B. Aggressively bites, attacks, or endangers the safety of humans or domesticated animals without provocation after the dog has been classified as a potentially dangerous dog and after the owner has been notified of such classification.
5. **Dog Control Board.** The Dog Control Board shall consist of the Dog Control Officer, a local veterinarian, and a designee or designees from the Oglethorpe County Board of Health.
6. **Guard Dog.** Any dog which has been trained by a recognized training facility to attack persons or other animals independently or upon command and any dog which, while not so trained, is reasonably expected to perform as a guardian of the property upon and within which it is located. A recognized training facility shall be deemed to mean any person, partnership, company or corporation holding a state kennel license for either of the above purposes.
7. **Leash.** A cord or strap designed for and of sufficient strength to hold animal in check.
8. **Owned Dog.** Any dog will be considered owned if any of the following are present:
 - A. Someone claiming and having proof of Ownership.
 - B. A microchip.

- C. Collar with current identification or current rabies tag.
 - D. Signs of recent care, health, training and /or disposition.
 - E. Has resided in the care of a Person for more than 72 hours.
9. Owner. Any person or legal entity, including, but not limited to, a corporation, partnership, firm, or trust owning, possessing, harboring, keeping, giving care or having custody or control of a domesticated dog, potentially dangerous, dangerous, or vicious dog. This shall include any person hired or acting as custodian of the dog for its owner.
10. Potentially Dangerous Dog. Any dog will be considered as a potentially dangerous dog if any of the following are present:
- A. Any dog that without provocation bites a human being or domesticated animal on public or private property at any time after this Ordinance has been approved and executed; or
 - B. Any dog that chases or approaches a human being or domesticated animal upon the street, sidewalks or any other public and private property in a vicious or terrorizing manner with an apparent attitude of attack.
11. Proper Enclosure. An enclosure for keeping a dangerous dog, potentially dangerous dog, or vicious dog while on the owner's property securely confined indoors or in a securely enclosed and locked pen, fence, or structure suitable to prevent the entry of young children and designed to prevent the dog from escaping. Any such pen or structure shall have secure sides and a secure top, and, if the dog is enclosed within a fence, all sides of the fence shall be of sufficient height and the bottom of the fence shall be constructed or secured in such a manner as to prevent the dog's escape either from over or from under the fence. Any such enclosure shall also provide protection from the elements for the dog.
12. Records of Appropriate Authority. Records of any federal, state, county, or municipal law enforcement agency, animal control agency, board of health, court, or records of a dog control officer as provided by this Ordinance.
13. Severe Injury. Any physical injury to a human or domesticated animal that results in broken bones, disfiguring lacerations requiring multiple sutures or cosmetic injury, or a physical injury that results in death.
14. Stray Dog. Any dog will be considered stray in the absence of signs of an Owned Dog and has any of the following present:
- A. Signs that dog has received adequate care in the past but is not being cared for currently.
 - B. Characteristics consistent with being adequately socialized in the recent past.
 - C. Collar without current identification or current rabies tag.
15. Veterinarian. Any person who holds a license to practice veterinary medicine in the State of Georgia.
16. Vicious Dog.
- A. Shall refer to any dog that inflicts a severe injury on a human being without provocation after the owner has notice that the dog has previously bitten or attacked or endangered the safety of a human being at any time after this Ordinance has been approved and executed; or
 - B. A dog shall not be a vicious dog if the injury inflicted by the dog was sustained by a person tormenting, abusing, or assaulting the dog or had in the past been observed or reported to have tormented, abused or assaulted the dog or was committing or attempting to commit a crime.
 - C. Such term shall not include a dog that inflicts an injury upon a person when the dog is being used by a law enforcement officer to carry out the law enforcement officer's official duties. (Code 1981, § 4-8-41, enacted by Ga. L. 2006, p. 472, § 1/HB 1497; Ga. L. 2008, p. 114, § 2-1/HB 301.)

Section 30-102 Dog Control Officer

Pursuant to O.C.G.A. § 4- 8-22(c), the duties of the Dog Control Officer shall refer to the Oglethorpe County Code Enforcement Officer or any person so designated by the Mayor of the City of Lexington. The duty of the Officer shall be to enforce the Dangerous Dog Ordinance and any other ordinances identified by the City.

Section 30-103 Duties of the Dog Control Officer

It shall be the duty of the Dog Control Officer(s) to make such investigations and inquiries as may be necessary to identify dangerous, potentially dangerous, and vicious dogs and the owners thereof within the unincorporated

area of the county, and within the incorporated areas of the county, upon adoption of the Ordinance and administrative agreements by local governments which are consistent with the service delivery strategy of Oglethorpe County, and to otherwise enforce the provisions of this Ordinance. These officers shall be vested with the authority to investigate any violations of this Ordinance, and may also call upon such other officers, constables and employees of the Magistrate's Office, Code Enforcement Office or the Sheriff's Department of Oglethorpe County as may be necessary for the enforcement of this Ordinance and for the issuance of citations.

Dog Control Officers shall be authorized to enforce the provisions of this Ordinance upon receipt of a credible report of a violation of this Ordinance, in written or oral form, from a law enforcement officer, 911 dispatcher, Board of Health, rabies control officer, or citizen. Appropriate records of complaints and the results of the ensuing investigation shall be kept by the investigating officer.

The Dog Control Officer(s) may enter onto private property to carry out their duties under this Ordinance under the following circumstances:

1. with permission of the property owner or other person in lawful possession of the property;
2. with and in accordance with a warrant lawfully issued by the Magistrate Court of Oglethorpe County; or
3. without permission or warrant only if such entry is necessary because of an immediate endangerment to human life or an imminent threat of the destruction of evidence.

It shall also be the responsibility of the Dog Control Officer(s) to enforce O.C.G.A. § 4-8-20 through § 4-8-45 relating to dangerous dogs and O.C.G.A. § 31-19-3, § 31-19-5, § 31-19-10 relating to rabies inoculation.

Section 30-104 Complaints

When for any reason any person regarding any matter governed under this Ordinance contacts the Code Enforcement Officer, the Dog Control Officer, any employee of the Local Government, or a constitutional officer of Oglethorpe County, Georgia, they shall furnish their name, address and telephone number.

Section 30-105 Identification and Inoculation

It shall be unlawful for any person to own, possess or maintain any dangerous, potentially dangerous, and vicious dog that does not have a current rabies inoculation, and all such dogs shall wear a securely attached collar about its neck displaying such current rabies tag and owner identification and contact information.

In the event any potentially dangerous, dangerous, or vicious dog or any other dog, as required by Georgia State law to possess a current rabies vaccination, is involved in any type of physical confrontation with a human being or another animal, the owners of such animals shall be prepared to present documentation of current vaccinations upon request of the Dog Control Officer.

It shall be the duty of any person bitten by any animal reasonably suspected of being rabid to immediately notify the Oglethorpe County Board of Health. It shall be the duty of the owner, custodian, or person having possession and knowledge of any animal which has bitten any person or animal or of any animal which exhibits any signs of rabies to notify the Oglethorpe County Board of Health or its designee and to confine or destroy such animal in accordance with rules and regulations of the Oglethorpe County Board of Health. (O.C.G.A. § 31-19-3 ; § 31-19-5; § 31-19-10)

Any person who violates any provision of this chapter or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor. (O.C.G.A. § 31-19-10)

Section 30-106 Classification of Potentially Dangerous, Dangerous Dogs and Vicious Dogs; Notice to Owner Required

When a potentially dangerous, dangerous, or vicious dog is classified as such, or when a potentially dangerous dog is reclassified as a dangerous dog, or a dangerous dog is reclassified as a vicious dog, the Dog Control Officer shall notify the owner of the dog of such classification. Such notice shall be in writing and mailed by certified mail to the

owner' s last known address. Such notice shall be complete upon mailing (Code 1981, § 4-8-23, enacted by Ga. L. 1988, p. 824, § 2; Ga. L. 1989, p. 159, V 2; Ga. L. 2000, p. 1589, § 3) and shall contain, at a minimum, the following items:

1. A summary of the Dog Control Officer's findings that formed the basis for the dog's classification or reclassification;
2. The date of classification and a statement that the owner has 15 days to request a hearing on the Dog Control Officer's determination;
3. A statement that the hearing, if requested, shall be before the Dog Control Board;
4. A hearing request before the Dog Control Board can be made either in writing or orally and a date and time will be assigned to the requesting person(s) and
5. A statement that, if a hearing is not requested, the Dog Control Officer's determination will become effective for all purposes under this Ordinance on a date specified in the notice, which shall be the first day after the last day on which the owner has a right to request a hearing.

A dog that inflicts an injury upon a person when the dog is being used by a law enforcement officer to carry out the law enforcement officer's official duties shall not be a potentially dangerous, dangerous, or vicious dog within the meaning of this Ordinance. A dog shall not be a dangerous dog, potentially dangerous dog, or vicious dog within the meaning of this Ordinance if the injury inflicted by the dog was sustained by a person who, at the time, was committing a willful trespass or other tort or was tormenting, abusing, or assaulting the dog or had in the past been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime. (Code 1981, § enacted by Ga. L. 2006, p. 472, § 1/HB 1497; Ga L. 2008, p. 114, § 2-1/HB 301.)

Section 30-107 Liability of Owner

1. Owner of a Potentially Dangerous, Dangerous, or Vicious Dog
The notice procedures provided for in this Ordinance are not essential conditions for the enforcement of the provisions of this Ordinance. The owner of a potentially dangerous, dangerous, or vicious dog is held to know that such dog is potentially dangerous, dangerous, or vicious if the dog has, at any time, displayed one or more of the behaviors described in the definitions of Dangerous Dog, Potentially Dangerous Dog, or Vicious Dog as provided in this Ordinance.
2. Owner of a Dog Pending a Hearing
Upon notification of a classification as set forth in Section 30-106 of this Ordinance, it is the responsibility of the owner of the dog to immediately confine the dog.
 - A. While on the owner's property, confinement shall mean either securely confined indoors or in a securely enclosed and locked pen, fence, or structure suitable to prevent the entry of young children and designed to prevent the dog from escaping. Any such pen or structure shall have secure sides and a secure top, and, if the dog is enclosed within a fence, all sides of the fence shall be of sufficient height and the bottom of the fence shall be constructed or secured in such a manner as to prevent the dog's escape either from over or from under the fence. Any such enclosure shall also provide protection from the elements for the dog.
 - B. The owner of the dog shall notify the Dog Control Officer if the dog is on the loose, is unconfined, has attacked a human, has died, or has been sold or donated.
 - C. The owner of the dog shall notify the Dog Control Officer if the owner is moving from the Dog Control Officer' s jurisdiction.
 - D. The owner of the dog who is a new resident of Oglethorpe County shall immediately contact the Dog Control Officer and notify him of such.

Section 30-108 Hearings; Presiding Body and Procedure

1. When a request is received for a hearing as provided in Section 30-105 , the Dog Control Officer shall schedule such hearing within 30 days after receiving the request. At the hearing, the owner of the dog shall be given the opportunity to present evidence, and the Dog Control Board shall receive such other evidence as they may find reasonable to make a determination either to sustain, modify, or overrule the Dog Control Officer's determination. Within ten days of the hearing, the Code Enforcement Officer shall notify the dog owner in writing by certified mail of its determination on the matter. (Code 1981 , § 4-8-24,

enacted by Ga. L. 1988, p. 824, § 2; Ga. L. 2000, p. 1589. § 3.)

2. No monies or contracts shall be expended by or entered into by the Dog Control Officer without the previous consent of the Chairman of the Oglethorpe Board of Commissioners.

Section 30-109 Certificate of Registration Required

1. It shall be unlawful for a dog owner to possess within the City of Lexington, a potentially dangerous, dangerous, or vicious dog without a certificate of registration issued in accordance with the provisions of this Ordinance (O.C.G.A. §4-8-25). Such certificate shall be issued annually to the owner of a dangerous, potentially dangerous or vicious dog by the Dog Control Officer if the owner presents to the Dog Control Officer sufficient evidence of:
 - A. A proper enclosure to confine the dangerous, potentially dangerous or vicious dog (O.C.G.A. § 4-8-26, § 4-8-41 (4));
 - B. The proper posting of the premises where a potentially dangerous, dangerous, or vicious dog is located with a clearly visible sign warning of such a dog on the property and containing a symbol designed to inform children of the presence of a potentially dangerous, dangerous, or vicious dog (O.C.G.A. , § 4-8-25);
 - C. An insurance policy in the amount of at least \$ 15,000 per occurrence issued by an insurer authorized to transact business in this State insuring the owner of the potentially dangerous, dangerous, or vicious dog against liability for any personal or property damages inflicted by the potentially dangerous, dangerous, or vicious dog (O.C.G.A. § 4-8-25); and
 - D. A Surety bond in the amount of \$ 15,000 or more issued by a surety company authorized to transact business in this state payable to any person or persons injured by the potentially dangerous, dangerous, or vicious dog (O.C.G.A. § 4-8-25) ;
2. The owner of a potentially dangerous, dangerous, or vicious dog shall notify the Dog Control Officer within 24 hours if the dog is on the loose, is unconfined, has attacked a human, has died, or has been sold or donated. If the dog has been sold or donated, the owner shall also provide the Dog Control Officer with the name, address, and telephone number of the new owner of the dog (O.C.G.A. § 4-8-25); and
3. The owner of a potentially dangerous, dangerous, or vicious dog shall notify the Dog Control Officer if the owner is moving from the Dog Control Officer's jurisdiction (O.C.G.A. § 4-8-26). The owner of a potentially dangerous, dangerous, or vicious dog who is a new resident of the State of Georgia shall register the dog as required in this Code section within 30 days after becoming a resident (O.C.G.A. § 4-8-25). The owner of a potentially dangerous, dangerous, or vicious dog who moves from one jurisdiction to another within the State of Georgia shall register the potentially dangerous, dangerous, or vicious dog in the new jurisdiction within ten days after becoming a resident (O.C.G.A. § 4-8-26).

Section 30-110 Annual Registration Fee

An annual registration fee in the amount of \$100.00 shall be charged by Oglethorpe County, in addition to any regular dog licensing fees, to defray the cost to register the potentially dangerous, dangerous, or vicious dog as required in this Ordinance (Code 1981, § 4-8-25, enacted by Ga. L. 1988, p. 824, § 2; Ga. L. 1989, p. 159, § 3; Ga. L. 1989, p. 1532, § 15.)

Section 30-111 Guard Dogs

It shall be the duty of the owner, tenant, or custodian of any property on which a guard dog is kept for security purposes to post a notice in a conspicuous location on such property. Such notice shall consist of the words "Warning-Guard Dog", and shall be in clearly distinguishable block letters not less than five inches in height and one inch in width and containing a symbol designed to inform children of the presence of a guard dog if a guard dog is confined within a fenced area, such notice must be conspicuously posted at every entrance and exit of such fence. (O.C.G.A. §21-8-21 and O.C.G.A. § 16-11-107.)

Section 30-112 Disposition of Dogs Found to be in Violation

Any dog in violation of this Ordinance may be taken to the Madison/Oglethorpe County Animal Shelter or any other animal shelter facility sanctioned by Oglethorpe County. The owner will be sought and notified in a reasonable amount of time by the Dog Control Officer. It is the responsibility of the dog owner to notify the Dog Control Officer of any lost or escaped animal as required in Section 30-109.2, and to pay all costs and fees associated with the dog's care and confinement. (O.C.G.A. § 4-8-29).

Any dog classified as a stray dog that bites a human being or domestic animal shall immediately become the property of the county or state health officer and will be impounded for testing for possible rabies. (O.C.G.A. § 31-19-3; § 31-19-5; § 31-19-10)

Section 30-113 Redemption of Impounded Dogs

Any potentially dangerous, dangerous, or vicious dog that has been confiscated under the Section 30-103 of this Ordinance shall be returned to its owner upon the owner's compliance with the provisions of Section 30-109 and upon the payment of reasonable confiscation costs including all impoundment costs and the cost of a rabies inoculation if the dog does not display a current rabies tag or if the owner cannot provide proof of rabies inoculation. The fees referenced herein shall be established by the facility at which the dog was impounded. In the event the owner has not complied with the provisions of this section within 3 days of the date the dog was confiscated, said dog shall be destroyed in an expeditions and humane manner. (Code 1981, § enacted by Ga. L. 1988, p. 824, § 2.)

1. If the Owner of the Dog Cannot be Immediately Identified
It shall be the duty of the Dog Control Officer to notify the owner, if known or can be reasonably ascertained, of every dog impounded, by telephone or by mail, as quickly as possible after the impoundment. Once notified the owner of any impounded dog will be responsible for any and all impoundment costs and the cost of a rabies inoculation if the dog does not display a current rabies tag or if the owner cannot provide proof of rabies inoculation. The fees referenced herein shall be established by the facility at which the dog was impounded. The owner can, when all associated costs are paid, and all applicable regulations under Section 30-109 of this Ordinance are met, redeem his dog from this facility In the event the owner has not complied with the provisions of this section within 3 days of the date the dog was confiscated, said dog shall be destroyed in an expeditions and humane manner. (Code 1981 , § 4-8-27, enacted by Ga. L. 1988, p. 824, § 2).

Section 30-114 Disposition of Dog Demonstrating an Imminent Threat

If the owner of the dog is known or ascertainable, but for any valid reason cannot be reached within the prescribed period, the Dog Control Officer shall take that dog to the nearest animal shelter facility for impoundment. The Dog Control Officer or the officer's designee or any certified law enforcement officer shall be authorized to dispose of any dog in as humane and painless a manner as possible when that animal is deemed to be a danger to human life or property. The reporting officer on the scene will make that determination. The disposal of any dog as provided herein does not relieve the owner of any liability for any violation of this Ordinance.

Section 30-115 Defense of Person or Property

Any person may defend his or her person or property, or the person or property of another, from injury or damage caused by a dog, in accordance with and to the extent permitted by O.C.G.A. § 4-8-5 which reads as follows;

1. Cruelty to dogs; authorized killing of dogs.
 - A. No person shall perform a cruel act on any dog; nor shall any person harm, maim, or kill any dog, or attempt to do so, except that a person may:
 - (1) Defend his person or property, or the person or property of another, from injury or damage being caused by a dog; or
 - (2) Kill any dog causing injury or damage to any livestock or poultry.
 - B. The method used for killing the dog shall be designed to be as humane as possible under the circumstances. A person who humanely kills a dog under the circumstances indicated in section

30-115.1.A shall incur no liability for such death.

- C. This Code section shall not be construed to limit in any way the authority or duty of any law enforcement officer, dog or rabies control officer, humane society, or veterinarian. (Ga. L. 1969, p. 831, § 5.)

Section 30-116 Abandonment of Dogs

1. **Abandonment of dead dogs - Upon private property**
No person shall intentionally abandon a dead dog on any private property belonging to another unless the person so doing shall have first obtained permission from the owner of the property on which the dog is being left and the provision of O.C.G.A. § 4-5-3 are complied with in full. (O.C.G.A. § 4-8-1 . Ga. L. 1969, p. 831, § 1 .)
2. **Abandonment of dead dogs - Upon public property or public right of way**
No person shall abandon a dead dog on any public property or public right of way unless the place in which the dog is being left is a public dump or other facility designed for receiving such and has been designated by the local governmental authorities as public facility for receiving trash or refuse and the provisions of O.C.G.A. § 4-5-3 are complied with in full. (O.C.G.A. § 4-8-2. Ga. L. 1969, p. 831, § 2.)
3. **Abandonment of Dogs**
No person shall release a dog on any property, public or private, with the intention of abandoning the dog. (O.C.G.A. § 4-8-3, Ga. L. 1969, p. 831, § 3.)
4. **Penalty for Abandonment of Dogs**
Except as provided in O.C.G.A. §16-12-4 (Cruelty to animals), any person who violates any provision of this section shall be guilty of a misdemeanor with a minimum fine of \$500 or 30 days confinement or both and or community service. (Ga. L. 1969, p. 831, § 7; Ga. L. 1988, p. 824, § 1 ; GA . L. 2000, p. 754 §3.
5. **Reward for information**
The Mayor of the City of Lexington may authorize a reward for information leading to the arrest of persons in violation of this Section.

Section 30-117 Records

It shall be the duty of the Dog Control Officer to keep and maintain current and accurate records of all activities and transactions of his position. Such records shall include but not be limited to incident reports, a description of each dog placed in custody; the date, time, and circumstances of impoundment or receipt of the dog; the date time, and circumstances of the disposition of the dog; all fees of every kind that are collected; any other such records that are deemed proper and necessary to provide an accurate accounting of the enforcement activities. Such records shall be retained by the Code Enforcement Officer for a period of not less than twelve months and shall be open for public inspection at any time during normal business hours.

Section 30-118 Liability of County Officers, Agents and Employees

The City or Lexington, Oglethorpe County, and its officers, agents, and employees shall not be held responsible or liable for any accidents, diseases, injuries or deaths to any dog while being impounded or boarded in association with this Ordinance, nor for any action to enforce or failure to enforce the provisions of this Ordinance. It is hereby recognized that enforcement of this Ordinance requires the application of its provisions to specific factual circumstances, thus entailing the necessary application of discretion and judgment in all matters related hereto. (Code 1981 , § 4-8-45, enacted by Ga. L. 200G, p. 472, § 1/HB 1497.)

Section 30-119 Violations

Any person that violates the provisions of this Ordinance shall be issued a citation for that violation to appear before the Magistrate's Court of Oglethorpe County and, upon conviction, shall be punished as provided in Section 30-121 of this Ordinance (O.C.G.A. § 4-8-43). Such a citation may be issued by the Code Enforcement Officer based upon his own personal knowledge or the report of the Dog Control Officer or any sworn officer possessing first-hand knowledge of the violation.

Section 30-120 Penalty for Violations

1. Dogs with No Identification and/or No Evidence of Inoculation
Except as provided for in Section 30-122 of this Ordinance, any person convicted of a violation of this section of the Ordinance shall be punished by a fine of not less than \$50 for the first offense; a fine of not less than \$ 100 for the second offense; and a fine of not less than \$250 for the third and subsequent offenses. Applicable court costs shall be levied in addition to any such fine imposed.
2. Potentially Dangerous and/or Dangerous Dogs
Except as provided for in Section 30-122 of this Ordinance;
 - A. The owner of a **dangerous dog** who violates the applicable provisions of this Ordinance shall be guilty of a misdemeanor of high and aggravated nature. In addition to any confinement that might be imposed for a conviction under this subsection, for the second conviction a fine of not less than \$500 shall be imposed and for a third or subsequent conviction a fine of not less than \$750 shall be imposed. Applicable court costs shall be levied in addition to any such fine imposed.
 - B. The owner of a **potentially dangerous dog** who violates the applicable provisions of the Ordinance shall be guilty of a misdemeanor. In addition to any confinement that might be imposed for a conviction under this subsection, for a second conviction a fine of not less than \$ 150 shall be imposed and for a third or subsequent conviction a fine of not less than \$300 shall be imposed.
 - C. If an owner who has a previous conviction for a violation of this Ordinance knowingly and willingly fails to comply with the provisions of this Ordinance, such owner shall be guilty of a felony if the owner's dangerous dog attacks or bites a human being under circumstances constituting another violation of this Ordinance. The owner of a dangerous dog who is convicted for a violation of this subsection shall be punished by a fine of not less than \$ 1,000 or more than \$5,000 or by imprisonment for not less than one or more than five years or by both such fine and imprisonment.
 - D. An owner who knowingly and willfully fails to comply with the provision of this Ordinance shall be guilty a felony if the owner's dangerous dog aggressively attacks and causes severe injury or death of a human being under circumstances constituting a violation of this Ordinance. The owner of a dangerous dog who is convicted for a violation of this subsection shall be punished by a fine of not less than \$5,000 or more than \$ 10,000 or by imprisonment for not less than one of more than ten years or by both such fine and imprisonment.
 - E. In addition to the penalties for violations under subsection C or D of this Ordinance, the dangerous dog involved shall be immediately confiscated by the Dog Control Officer or by a law enforcement officer or another person authorized by the dog control officer and placed in quarantine for the proper length of time as determined by the County Board of Health, and thereafter, the dangerous dog shall be destroyed in an expeditious and humane manner.
 - F. No owner of a dangerous dog shall be held criminally liable under this Ordinance for injuries inflicted by said owner's dog to any human being while on the owner's property. (O.C.G.A. § 4-8-28; enacted by Ga L. 1988, p. 824, § 2.)
3. Vicious Dogs
 - A. The owner of a vicious dog who violates applicable provisions of the Ordinance shall be guilty of a misdemeanor. In addition to any confinement that might be imposed for a conviction under this subsection, for the second conviction a fine of not less than \$300 shall be imposed and for a third or subsequent conviction a fine of not less than \$500 shall be imposed.
 - B. If an owner who has a previous conviction for a violation of this Ordinance knowingly and willfully fails to comply with the provisions of this Ordinance, such owner shall be guilty of a misdemeanor of high and aggravated nature if the owner's vicious dog attacks, bites, causes severe injury, or causes the death of a human being under circumstances constituting another violation of this Ordinance.
 - C. In addition to the penalties for violation under Section 30-121.3.A, the vicious dog involved shall be immediately confiscated by the Dog Control Officer or by a law enforcement officer or another person authorized by the dog control officer and placed in quarantine for the proper length of time as determined by the County Board of Health, and thereafter, the dangerous dog shall be destroyed in an expeditious and humane manner (O.C.G.A. Code 1981 § 4-8-43; enacted by Ga. L.

2006, p. 472, § 1/ HB 1497.)

- D. **Penalty for Abandonment of Dogs**
Except as provided in O.C.G.A. §16-12-4 (Cruelty to animals) any person who violates any provision of this section shall be guilty of a misdemeanor with a minimum fine of \$500 or 30 days confinement or both and or community service (Ga. L. 1969, p. 831, § 7; Ga. L. 1988, p. 824, § 1; GA, L. 2000, p. 754 § 3.)
- E. **Penalty for Cruelty to Dogs**
Per O.C.G.A. § 4-8-7 any person who violates the provisions of Section 30-115 of this Ordinance pertaining to cruelty or inhumane killing of dogs while in defense of person or property shall be guilty of a misdemeanor. (Ga. L. 1969, p. 831, § 7; Ga. L. 1988, p. 824, § 1.)

Section 30-121 Obstruction of Officer

It shall be unlawful for any person to hinder, harass, interfere, or otherwise obstruct the performance of any Dog Control Officer in the official performance of his duties as provided for in this Ordinance. Any person convicted of a violation of §30-122 shall be punished by a fine in an amount not to exceed one thousand dollars (\$ 1,000) plus applicable court costs or by confinement in the county jail for a period not to exceed sixty (60) days or both such fine and confinement as authorized by O.C.G.A. §15-10-60 et. seq.

(Adopted 08/12/2010)

CHAPTER 31: RESERVED

CHAPTER 32: LICENSING AND BUSINESS REGULATION

Section

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Article I. RESERVED

Article II. BUSINESSES REGULATED

Section 32-201 Malt Beverage and Wine

1. Definitions. The following words shall be defined in this Section as follows:
 - A. "Malt beverage" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or other similar product, or any combination of such products in water, containing not more than 6 percent alcohol by volume.
 - B. "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.
 - C. "Retailer" or "retail distributor" means any person, firm or corporation engaged in selling at retail, any malt beverages and/or wine for beverage purposes.
 - D. "Governing authority" means the Mayor and Council of the City of Lexington, Georgia.
 - E. "Minor" means the age established by the Georgia General Assembly in the O.C.G.A. Section 3-3-23 or by other- state laws regulating the sale of alcoholic beverages.
2. License
 - A. Before such license shall be granted, the applicant therefore shall comply with the following:
 - (1) No retail malt beverage and wine license shall be granted to any person unless such person is at least twenty-one (21) years of age and has been a resident of the State of

- Georgia for a minimum of one (1) year prior to filing an application for such license.
- (2) No retail malt beverage and wine license shall be granted to any person unless the entire business premises of the proposed location is situated beyond one hundred (100) yards from the property line of any school ground or church, the same to be measured by way of the nearest traveled road, street, or highway, as provided by law. The governing authority may require each Application for a retail malt beverage and wine license to include a scale drawing of the location of the proposed premises showing the distance to the nearest church or school, and a certificate of a registered survey, or that such location complies with this Ordinance with reference to this section.
 - (3) A separate retail malt beverage and wine license shall be required for each place of business.
 - (4) Anyone applying for a retail malt beverage and wine license must be of good character. Corporate applicants shall be of good business reputation. All managers, clerks or other employees of any establishment of business applying for a retail license shall be of good character.
 - (a) No applicant for a license who has a criminal record (except minor traffic offense) within three (3) years of the date of his application for a license shall be granted a license.
 - (b) The licensee shall be actively and solely responsible for the management and operation of the business for which the license is granted.
 - (c) As a prerequisite to the issuance of any such permit or license, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two (2) years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the governing authority.
 - (d) The governing authority, in its discretion, may consider any extenuating circumstances which may reflect favorably or unfavorably on the applicant, application or the proposed location of the business. If in its sole judgment circumstances are such that the granting of the license would or would not be in the best interest of the general public such circumstances may be grounds for granting or denying the application.

3. License Application

- A.** Application for a retail malt beverage and wine license shall be made on forms furnished by the governing authority as follows:
- (1) A retail malt beverage and wine license shall be valid only for the calendar year indicated thereon and no such license may be renewed. A licensee who desires to continue in business during the next or subsequent calendar year must make a new application for such year on or before December 15 of the preceding year.
 - (2) All applications for a retail malt beverage and wine license shall be presented in person and made by sworn statements.

4. License Fee and Term

The annual fee for a retail malt beverage and wine license shall be one hundred (100) dollars per annum for 1989 and may be increased by Ordinance of the Mayor and Council of the City of Lexington. Fees shall be paid to the Clerk of the City of Lexington, Georgia, with said fee accompanying the application. All licenses shall expire on December 31 of the year they were granted.

5. Operation of Licensed Premises

- A.** No retailer shall sell or deliver any malt beverages and/or wine to any person except in said retailer's place of business.
- B.** Retailers shall not engage in the sale of beer, malt beverages, and wine except between the hours of 7:00 a.m. and 12:00 midnight on each day of the week Monday through Saturday.
- C.** No malt beverage or wine shall be sold on Sunday except as provided in O.C.G.A. Section 3-3-7.

- D. No holder of a license authorizing the sale of beer and/or wine at retail not any other employee of the licensee, shall do any of the following upon the licensed premises:
 - (1) Knowingly sell beer or wine to a minor.
 - (2) Knowingly sell beer or wine or any person while such person is in an intoxicated condition.
 - (3) Permit beer or wine to be consumed upon the licensed premises.
 - (4) Sell beer or wine upon the licensed premises on any date or at any time when such sale or consumption is prohibited by local, state or federal law.
- E. The making of any statement on an application for license to sell malt beverages and wine which shall be later found to be false shall constitute grounds for revocation of said license.
- F. The holder of a license to sell malt beverages and wine shall post in a conspicuous place in his establishment a sign printed in letters at least two (2) inches high reading as follows: "SALE OF MALT BEVERAGES AND WINE TO MINORS STRICTLY PROHIBITED" and "SALE OF MALT BEVERAGES AND WINE ON SUNDAYS STRICTLY PROHIBITED."
- G. Licenses under this Section shall be displaced prominently for which same was issued.
- H. No retail malt beverage and wine license shall be transferable or assignable to any person or other location. In the event that a licensed business is sold or closed, it shall be the duty of the new owner or occupant to apply for a license which may or may not be granted.
- I. No person shall engage in the sale of malt beverages and wine in the City of Lexington, Georgia, without first complying with the rules and regulations set out in this section. In addition to the rules and regulations hereinabove set out, each licensee doing business in the City of Lexington, Georgia, under this Ordinance shall comply with all laws of the State of Georgia, federal laws, and rules and regulations of the State Revenue Commissioner relating to the sale and distribution of malt beverages and wine in Georgia, and any violation of same shall subject said licensee to suspension or revocation of his retail malt beverage as provided herein.

6. License Suspension or Revocation

- A. The suspension or revocation of retail malt beverage and wine license under the provisions of this section shall be in accordance with the guidelines of due process set forth herein.
 - (1) Prior to suspending or revoking the retail malt beverage and wine license of any licensee, the governing authority shall afford the licensee a hearing. The licensee must be notified by written notice at least three (3) days prior to the hearing of the time, place, and purpose of the hearing and a general statement of the charges to be considered "Good Cause" for the suspension or revocation of such license.
 - (2) If the governing authority determines that a licensee's operation of his place of business presents significant harm to the public health and welfare, the governing authority may revoke or suspend the license. The licensee shall be afforded an opportunity for a hearing upon timely application to the governing authority and as provided in O.C.G.A. Section 33-2.
 - (3) The governing authority shall afford separate hearings for each license.
 - (4) The governing authority shall conduct all hearings in a timely manner and all decisions suspending or revoking such licenses shall be in writing with the reasons therefore stated, and mailed or delivered to the applicant.

(Adopted 8/10/1989)

Section 32-202 Reserved

Section 32-203 Reserved

Section 32-204 Insurance Businesses

- 1. **License Required.** Each person, agency, firm, or company doing an insurance business within the municipal corporate limits shall be required to obtain a license from the City Clerk/Treasurer in the manner specified in this chapter.
- 2. **Fee Established.** The annual business license fee for each company authorized by the state to write life, accident, and sickness insurance, as such terms are defined in Chapter 7, Title 33 of the O.C.G.A., shall be

fifteen dollars (\$15.00) for each separate business location of such company in the city, and the business license fee for all other persons, agencies, firms, or companies doing an insurance business within the city shall be ten dollars (\$10.00).

Section 32-205	Reserved
Section 32-206	Reserved
Section 32-207	Reserved
Section 32-208	Reserved
Section 32-209	Reserved
Section 32-210	Reserved
Section 32-211	Reserved
Section 32-212	Reserved
Section 32-213	Reserved
Section 32-214	Reserved
Section 32-215	Parades

1. **Registration and Permit.** Any person who wishes to organize, form, or conduct a parade as defined herein shall be required to register such parade with the Mayor and Council at least twenty-four (24) hours in advance of the event and to obtain a permit therefor.
2. **Definition.** For the purposes of this section, "parade" shall mean any march, ceremony, demonstration, exhibition, or procession of any kind upon any public street of the city.
3. **Application.** Application for a permit to conduct a parade shall be made to the Mayor and Council in writing, shall be signed by the person responsible for the conduct of the parade, and shall contain the following information:
 - A. The time proposed for the parade;
 - B. The route of the proposed parade;
 - C. The number of vehicles (if any) and number of persons whose participation is anticipated in the proposed parade;
 - D. The name and address of the person or organization sponsoring or promoting the proposed parade; and
 - E. The name and address of the person making the application for a parade permit.
4. **Review of Application.** The Mayor, who shall review the information set forth in the application and ascertain the following: the extent of vehicular and pedestrian traffic to be anticipated at the time and place of and on the route of the proposed parade; the availability of police forces to escort the proposed parade and to direct traffic in conjunction with the proposed parade; and whether or not, in the light of all the circumstances, the proposed parade will unreasonably burden or interfere with the normal use of the streets or sidewalks of the city by the general public.
5. **Disposition.** In the event the Mayor determines in view of all the circumstances that the proposed parade will unreasonably burden and interfere with the normal use of the streets or sidewalks of the city by the general public, he shall deny the request for a parade permit; and if he determines on the contrary that the proposed parade will not unreasonably burden or interfere with the normal use of the streets or sidewalks of the city by the general public, he shall grant the parade permit. In either case, the Mayor shall indicate his disposition on the application and shall notify the applicant of the action taken.
6. **Exemption.** The provisions of this section shall be inapplicable to any parade which is conducted under the supervision of a practicing mortician in conjunction with any funeral.

Section 32-216 **Reserved**

Section 32-217 **Reserved**

CHAPTER 33: NUISANCES

Section

Article I Noise and Air Quality

- 33-101 Noisy Nuisances
- 33-102 Air Quality Nuisances

Article II Dwellings, Buildings and Structures

- 33-201 Findings Ordinance
- 33-202



Article I. Nuisance

Section 33-101 Noisy Nuisances

1. It shall be deemed a nuisance for any person wilfully to make and continue or cause to be made and continued any excessive, unnecessary, or unusually loud noise which disturbs the peace and quiet of any neighborhood or which causes serious discomfort or annoyance over a period of time to any reasonable person of normal sensitiveness within the city limits of Lexington.
2. **Exemptions.** The following uses and activities shall be exempt from the noise regulations set forth in this chapter.
 - A. Noises of safety signals and warning devices;
 - B. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
 - C. Noises resulting from emergency work, to be construed as work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger.

Section 33-102 Air Quality Nuisances

It shall be deemed a nuisance for a person to cause, suffer, or allow any emissions of gases, vapors, or odors beyond the property line of the property from which such emissions occur to be in sufficient quantities and of such characteristics and duration.

Article II. Dwellings, Buildings and Structures

Section 33-201 Findings Ordinance

Whereas state law under O.C.G.A. § 41-2-7 et seq. Allows municipalities to combat the negative impacts of nuisances by adopting local ordinances to control nuisance properties and structures by allowing repair, removal, and demolition;

Whereas, O.C.G.A. § 41-2-9(a) requires that a separate Ordinance finding that dwellings, buildings, or structures of negative condition as described in O.C.G.A. § 41-2-7 be adopted by local governing authorities so that the benefits of O.C.G.A. § 41-2-7 et seq. Can be utilized by the local government;

Whereas, the duly elected governing authority of the City of Lexington, Georgia; the Mayor and Council thereof;
and

Whereas, the Mayor and Council intend to adopt this Ordinance so as to comply with O.C.G.A. § 41-2-9(a) by adopting findings that there exist in the City dwellings, buildings or structures the condition and character of which meet the description found in O.C.G.A. § 41-2-7.

Be it, and it is hereby ordained by the Mayor and Council of the City of Lexington:

1. Findings of the existence of nuisances.
 - A. The governing authority of the City of Lexington, Georgia find and declare that within the city limits of the City of Lexington there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the City of Lexington; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the city and the state; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
 - B. It is further found and declared that in the City of Lexington where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the City and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. The governing authority of the city finds that there exist in the city dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or other conditions exist rendering such dwellings, buildings or structure unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the City, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.
 - C. It is the intention of the governing authority that this Ordinance shall comply with and does comply with O.C.G.A. § 41-2-9(a) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the City of Lexington, Georgia.
2. The preamble to this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.
3. Reserved.
4. Enforceability and Severability
 - A. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.
 - B. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause, or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause, or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause, or phrase of this Ordinance.
 - C. In the event that phrase, clause, sentence, paragraph, or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgement or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional, or otherwise unenforceable any of

the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 33-202 Rules and Regulations for Abatement of Unsafe or Unhealthful Premises

Whereas, the legislature of the State of Georgia adopted a state nuisance abatement law in order to empower local communities to combat the negative impacts of unfit buildings and structures under O.C.G.A. § 41-2-7 et, seq.:

Whereas, the legislature, effective July 1, 2001 amended O.C.G.A. § 41-2-7 et. Seq. To further clarify nuisance abatement procedures and to provide further due process of law;

Whereas, the City of Lexington declares and finds that within its City limits there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and which are not in compliance with the applicable state or minimum standard codes as adopted by local ordinance or operation of law or any building, fire, life safety or other codes relative to the safe use of real property and real property improvements adopted by local ordinance by the City of Lexington; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the City of Lexington; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the City of Lexington; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures;

Whereas, it is found and declared that within the city limits of the city of Lexington there are in existence conditions or uses of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, that such uses are dangerous and injurious to the health, safety, and welfare of the people of the City and a public necessity exists for the repair of such conditions or the cessation of such uses which renders the adjacent real estate unsafe or inimical to safe human habitation;

Whereas, the City of Lexington finds that there exists in the City dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the municipality, or in which drug crimes are being committed, power is conferred upon the city under O.C.G.A. § 41-2-7 et. seq. as amended, to exercise the City's police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this Ordinance and;

Whereas on private property in the City of Lexington there exist endangerments to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the unsanitary or unsafe private property.

Be it, and it is hereby ordained by the Mayor and Council of the City of Lexington, Georgia, and by the authority thereof:

1. Nuisance Abatement Procedures.
 - A. Continued Use of Other Laws and Ordinances. It is the intent of the Mayor and Council that nothing in this Ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of any local enabling Act, charter, or ordinance or regulation nor to prevent or punish violations thereof; and the powers conferred by this Ordinance shall be in addition to and supplemental to the powers conferred by an other law or ordinance, legislation, or regulation.
 - B. Definitions.
 - (1) Applicable Codes mean:
 - (a) Any optional housing or abatement standard provided in Chapter 2 of Title 8 of the O.C.G.A. as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;

- (b) Any fire or life safety code as provided for in Chapter 2 of Title 25 of the O.C.G.A. ; and
 - (c) Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. § Chapter 2 of Title 8 after October 1 provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.
 - (2) Closing means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.
 - (3) Drug Crime means an act which is a violation of O.C.G.A. § Article 2 of Chapter 13 of Title 16, known as the Georgia controlled Substances Act.
 - (4) Dwellings, Buildings, or Structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term 'dwellings, buildings, or structures' shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.
 - (5) Governing Authority means the Mayor and Council of the City of Lexington.
 - (6) Municipality means any incorporated city within this state.
 - (7) Owner means the holder of the title in fee simple and every mortgagee of record.
 - (8) Parties in Interest means:
 - (a) Persons in possession of said property and premises;
 - (b) Persons having of record in the county in which the dwelling, building, or structure is located any vested right, title, or interest in or lien upon such dwelling, building, or structure or the lot, tract, or parcel of real property upon which the structure is situated or upon which the public health hazard or general nuisance exists based upon a fifty (50) year title examination conducted in accordance with the title standards of the State Bar of Georgia.
 - (c) Persons having paid an occupational tax to the governing authority for a location or office at the subject building or structure; or
 - (d) Persons having filed a property tax return with the governing authority as to the subject property, building, or structure.
 - (9) Public Authority means any member of a governing authority, any housing authority officer, or any officer who is in charge of any department or branch of the government of the municipality, county, or state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the county or municipality.
 - (10) Public Officer means the officer or officers who are authorized by O.C.G.A. §§ 41-2-7, 41-2-8 and 41-2-9 through 41-2-17 and by this Ordinance adopted under §§ 41-2-7, 41-2-8, and 41-2-9 through 41-2-17 to exercise the powers prescribed by this Ordinance or any agent of such officer or officers.
 - (11) Repair means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.
 - (12) Resident means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.
- C. Duties of Owners; Appointment of Public Officer; Procedures for Determining Premises to be Unsafe or Unhealthful.**
- (1) It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in

- conformance with applicable codes in force within the City, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances;
- (2) The Mayor and Council of the City of Lexington shall appoint or designate the Oglethorpe County Enforcement Officer or other official designated by resolution of the City Council, as the enforcement officer;
 - (3) Whenever a request is filed with the public officer by a public authority or by at least five (5) residents of the City of Lexington charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and parties in interest in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner of the parties in interest; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance. The summons shall notify the owner and parties in interest that a hearing will be held before a court of competent jurisdiction as determined by O.C.G.A. § 41-2-5, at a date and time certain and at a place within the City where the property is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in court. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing;
 - (4) If after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support such determination and shall issue and cause to be served upon the owner and parties in interest that have answered the complaint or appeared at the hearing an order;
 - (a) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structures so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes; or
 - (b) If the repair, alteration, or improvement of the said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property.

For purposes of this Ordinance, the court shall make its determination of reasonable cost in relation the present value of the dwelling, building, or structure without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be factor in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a Georgia appraiser classification as provided in Chapter 39A of Title 41, of the O.C.G.A. qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alternation, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction;

- (5) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure, to be repaired, altered, improved, to be vacated and closed, or demolished. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes and endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.

- (6) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and the City are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials;
- (7) The amount of the cost of demolition, including all courts costs, appraisal fees, administrative costs incurred by the tax commissioner, and all other costs necessarily associated with the abatement action, including restoration to grade the real property after demolition, shall be a lien against the real property upon which such cost was incurred.
- (a) The lien provided for in paragraph (7) of subsection (C) of this Ordinance section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the Clerk of the Oglethorpe County Magistrate’s Court and shall relate back to the date of the filing of the lis pendens notice required under subsection (g) of O.C.G.A. § 41-2-12. The Clerk of the Magistrate’s Court shall record and index such certified copy of the order in the deed records of Oglethorpe County and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the Clerk of the Magistrate’s Court, the Magistrate’s Court shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad

valorem tax, including specifically Chapter 4 of Title 48 of the O.C.G.A. provided, however that the limitation of O.C.G.A. § 48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The tax commissioner shall remit the amount collected to the governing authority of the City of Lexington, thirty (30) days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.

- (b) The tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 et seq. unless such costs are waived by resolution of Oglethorpe County. Any such amount collected and retained for administration shall be deposited in the general fund of county to pay the cost of administering the lien.
- (c) The City may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the municipality agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (d) Where the abatement action does not commence in the Superior Court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the Superior Court under O.C.G.A. § 5-3-29.
- (e) The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in court of competent jurisdiction prior to issuing a complaint in rem as provided in this Ordinance.
- (f) Nothing in this Ordinance shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

D. Determination by Public Officer That under Existing Ordinances Dwellings, Buildings, or Structures Are Vacant and Sample Conditions of Nuisances.

The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwelling, buildings, or structures; or of other residents of the City. Such conditions include the following (without limiting the generality of the foregoing):

- (1) Defects therein increasing the hazards of fire, accidents or other calamities;
- (2) Lack of adequate ventilation, light, or sanitary facilities;
- (3) Dilapidation;
- (4) Disrepair;
- (5) Structural defects;
- (6) Uncleanliness; and
- (7) Other additional standards which may from time to time be adopted and referenced herein by Ordinance amendment.

The public officer may determine, under existing ordinances, that a dwelling, building, or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

E. Powers of Public Officer.

The public officer(s) designated in this Ordinance shall have the following powers:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings,

buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;

- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of the Ordinance; and
- (5) To delegate any of his or her functions and powers under the Ordinance to such officers and agents as he or she may designate.

F. Service of Complaints.

- (1) Complaints issued by a public officer pursuant to this ordinance shall be served in the following manner. In all cases, a copy of the complaint and summons shall be conspicuously posted on the subject dwelling, building, or structure within three (3) business days of filing of the complaint and at least ten (10) days prior to the date of the hearing. A copy of the complaint and summons shall be served in one of the following ways:
 - (a) Personal service upon each owner and party in interest if such parties are residents of the city. Service shall be perfected at least ten (10) days prior to the date of the hearing. Service may be made by the public officer designated by ordinance to abate nuisances or by any law enforcement officer of the City; and a return of service, filed with the Clerk of the appropriate court, shall be deemed sufficient proof that service was perfected;
 - (b) Pursuant to the provisions of Article 5 Chapter 4 of Title 48 of the O.C.G.A.; or
 - (c) Statutory overnight delivery.
- (2) If any owner or party in interest is a resident of this state but resides outside of the city, service shall be perfected by certified mail or statutory overnight delivery, return receipt requested, to the most recent address shown in the county tax filings and mailed at least fourteen (14) days prior to the date of the hearing.
- (3) Nonresidents of this state, whose mailing address is known, shall be served by certified mail or statutory overnight delivery, return receipt requested, mailed at least fourteen (14) days prior to the date of the hearing. For nonresidents whose mailing address is unknown, a notice state the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in such county once a week for two (2) consecutive weeks prior to the hearing.
- (4) In the event either the owner or any party in interest is a minor, estate, an incompetent person, or person laboring under disabilities, the guardian or other personal representative of such person shall be served and such guardian or personal representative resides outside the county or is a nonresident of this state, he or she shall be served as provided for in subsection (6) of this Ordinance. If such owner or party in interest has no guardian or personal representative, service shall be perfected by serving the judge of the probate court of the county wherein such property is located at least thirty (30) days prior to the date of the hearing which judge shall stand in the place of and protect the rights of such minor, estate, or incompetent person or appoint a guardian ad litem for such person.
- (5) In the event of unknown persons or unborn remaindermen who are likely to have any rights in the property or interest or the proceeds thereof, the judge of the probate court of the city wherein such property or interest is located shall be personally served at least thirty (30) days prior to the date of the hearing, and it shall be the duty of the judge of the probate court to stand in the place of the protect the rights of such unknown parties or unborn remaindermen.
- (6) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence or if any owner or party in interest cannot, after due diligence, be served as provided in

this Ordinance, the public officer shall make an affidavit to that effect and serve by publication in the manner provided in subsection (3) of this Ordinance, and such publication shall be sufficient proof that service was perfected.

- (7) A notice of lis pendens shall be filed in the office of the Clerk of the Superior Court in the county in which the dwelling, building, or structure is located at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (8) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this Ordinance on the owner and any party in interest who answers the complaint or appears at the hearing. Any party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

CHAPTER 34: RESERVED

CHAPTER 35: SOIL EROSION, SEDIMENTATION, AND POLLUTION CONTROL

Section

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Section 35-101 Definitions

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

- 1. Best Management Practices (BMPs).** These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.
- 2. Board.** The Board of Natural Resources.
- 3. Buffer.** The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.
- 4. Certified Personnel.** A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
- 5. Commission.** The Georgia Soil and Water Conservation Commission (GSWCC).
- 6. CPESC.** Certified Professional in Erosion and Sediment Control with current certification by Certified Profession in Erosion and Sediment Control Inc., a corporation registered in North Carolina, which is also referred to as CPESC or CPESC, Inc.
- 7. Cut.** A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as excavation.
- 8. Department.** The Georgia Department of Natural Resources (DNR).
- 9. Design Professional.** A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by Certified Professional in Erosion and Sediment Control Inc.
- 10. Director.** The Director of the Environmental Protection Division or an authorized representative.
- 11. District.** The Broad River Soil and Water Conservation District.
- 12. Division.** The Environmental Protection Division (EPD) of the Department of Natural Resources.
- 13. Drainage Structure.** A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.
- 14. Erosion.** The process by which land surface is worn away by the action of wind, water, ice or gravity.
- 15. Erosion, Sedimentation and Pollution Control Plan.** A plan required by the Erosion and Sedimentation Act, *O.C.G.A.* Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section 35-103(3) of this ordinance.
- 16. Fill.** A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.

17. **Final Stabilization.** All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, one hundred percent (100%) of the soil surface is uniformly covered in permanent vegetation with a density of seventy percent (70%) or greater, or equivalent permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.
18. **Finished Grade.** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
19. **Grading.** Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.
20. **Ground Elevation.** The original elevation of the ground surface prior to cutting or filling.
21. **Land-Disturbing Activity.** Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Section 35-102, Paragraph 5.
22. **Larger Common Plan of Development or Sale.** A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.
23. **Local Issuing Authority.** Georgia Environmental Protection Division.
24. **Metropolitan River Protection Act (MRPA).** A state law referenced as *O.C.G.A. § 12-5-440 et.seq.* which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.
25. **Natural Ground Surface.** The ground surface in its original state before any grading, excavation or filling.
26. **Nephelometric Turbidity Units (NTU).** Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed or suspended particles are present.
27. **NOI.** A Notice of Intent form provided by EPD for coverage under the State General Permit.
28. **NOT.** A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.
29. **Operator.** The party or parties that have:
 - A. Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
 - B. Day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.
30. **Outfall.** The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.
31. **Permit.** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.
32. **Person.** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, any interstate body or any other legal entity.
33. **Phase or Phased.** Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.
34. **Project.** The entire proposed development project regardless of the size of the area of land to be

- disturbed.
35. **Properly Designed.** Designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the Manual as approved by the Commission up until the date of NOI submittal.
 36. **Roadway Drainage Structure.** A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
 37. **Sediment.** Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.
 38. **Sedimentation.** The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
 39. **Soil and Water Conservation District Approved Plan.** An erosion, sedimentation and pollution control plan approved in writing by the Broad River Soil and Water Conservation District.
 40. **Stabilization.** The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.
 41. **State General Permit.** The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.
 42. **State Waters.** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
 43. **Structural Erosion, Sedimentation and Pollution Control Practices.** Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures and sediment traps, etc. Such practices can be found in the publication Manual for Erosion and Sediment Control in Georgia.
 44. **Trout Streams.** All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, *O.C.G.A. § 12-5-20*, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.gaepd.org. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.
 45. **Vegetative Erosion and Sedimentation Control Measures.** Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:
 - A. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or
 - B. Temporary seeding, producing short-term vegetative cover; or
 - C. Sodding, covering areas with a turf of perennial sod-forming grass.Such measures can be found in the publication Manual for Erosion and Sediment Control in Georgia.
 46. **Watercourse.** Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
 47. **Wetlands.** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of

vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section 35-102 Exemptions

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

1. Surface mining, as the same is defined in *O.C.G.A. § 12-4-72*, "The Georgia Surface Mining Act of 1968".
2. Granite quarrying and land clearing for such quarrying;
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
4. The construction of single-family residences, when such construction disturbs less than one (1) acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in *O.C.G.A. § 12-7-6* and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least fifty (50) horizontal feet, but the Director may grant variances to no less than twenty-five (25) feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least twenty-five (25) horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of *O.C.G.A. § 12-7-6* and the buffer zones provided by this paragraph shall be enforced by the Local Issuing Authority;
5. Agricultural operations as defined in *O.C.G.A. § 1-3-3*, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;
6. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of Section IV C. of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;
7. Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
8. Any project involving less than one (1) acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within two hundred (200) feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one (1) acre, which involves land-disturbing activity, and which is within two hundred (200) feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 10 of this section;
9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality;

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

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

Section 35-103 Minimum Requirements for Erosion, Sedimentation and Pollution Control Using Best Management Practices

1. **General Provisions.** Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 35-103 (2) & (3) of this ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.
2. **Minimum Requirements/Bmps.**
 - A. Best management practices as set forth in Section 35-103 (2) & (3) of this ordinance shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of *O.C.G.A. §12-5-30*, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in *O.C.G.A. §12-7-6* subsection (b).
 - B. A discharge of storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) of *O.C.G.A. §12-5-30*, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units for waters classified

as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five (5) acres.

- C. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a Local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.
 - D. The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
 - E. The LIA may set more stringent buffer requirements than stated in 3. O. and P., in light of *O.C.G.A. §12-7-6 (c)*.
3. The rules and regulations, ordinances, or resolutions adopted pursuant to *O.C.G.A. §12-7-1 et. seq.* for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:
- A. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
 - B. Cut-fill operations must be kept to a minimum;
 - C. Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential;
 - D. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
 - E. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
 - F. Disturbed soil shall be stabilized as quickly as practicable;
 - G. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
 - H. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
 - I. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of *O.C.G.A. §12-7-1 et. seq.*;
 - J. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
 - K. Cuts and fills may not endanger adjoining property;
 - L. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
 - M. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
 - N. Land-disturbing activity plans for erosion, sedimentation and pollution control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section 35-103 2. B. of this ordinance;
 - O. Except as provided in paragraph (16) of this subsection, there is established a twenty-five (25) foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to *O.C.G.A. §12-2-8*, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate

erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow, Unless exempted as along an ephemeral stream, the buffers of at least twenty-five (25) feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:

- (i) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- (2) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (I) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and

P. There is established a fifty (50) foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed ; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of twenty-five (25) gallons per minute or less shall have a twenty-five (25) foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:

- (1) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- (2) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the buffer; and adequate erosion control measures are

incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

4. Nothing contained in *O.C.G.A. §12-7-1 et. seq.* shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section 35-103 2. & 3. of this ordinance.
5. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.

Section 35-104 Application/Permit Process

1. **General.** The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The Local Issuing Authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the owner and/or operator are the only parties who may obtain a permit.
2. **Application Requirements.**
 - A. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the Lexington without first obtaining a permit from the Local Issuing Authority to perform such activity and providing a copy of Notice of Intent submitted to EPD if applicable.
 - B. The application for a permit shall be submitted to the Local Issuing Authority and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section 35-104.3 of this ordinance. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Section 35-103.2. & 3. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by four (4) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.
 - C. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of *O.C.G.A. §12-5-23*, provided that such fees shall not exceed eighty dollars (\$80.00) per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of *O.C.G.A. 12-7-8* half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of *O.C.G.A. §12-7-17* shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
 - D. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The District shall approve or disapprove a plan within thirty-five (35) days of receipt. Failure of the District to act within thirty-five (35) days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Section 35-103 3. O. & P. has been obtained, all fees have been paid, and bonding, if required as per Section 35-104 2. F., have been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within thirty-five (35) days of receipt. Failure of the Local Issuing Authority with plan

review authority to act within thirty-five (35) days shall be considered an approval of the revised Plan submittal.

- E. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing the application under consideration, the Local Issuing Authority may deny the permit application.
- F. The Local Issuing Authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, three thousand dollars (\$3,000.00) per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the Local Issuing Authority with respect to alleged permit violations.

3. Plan Requirements.

- A. Plans must be prepared to meet the minimum requirements as contained in Section 35-103 2. And 3. of this ordinance, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to *O.C.G.A. §12-7-20*.
- B. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

4. Permits.

- A. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
- B. No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation and pollution control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section 35-103 3. O. & P. are obtained, bonding requirements, if necessary, as per Section 35-104 2. F. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Local Issuing Authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
- C. Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the local issuing authority.
- D. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
- E. The permit may be suspended, revoked, or modified by the Local Issuing Authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the

holder or his successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

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

Section 35-105 Inspection and Enforcement

1. The Local Issuing Authority will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance.
2. The Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.
3. The District shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
4. No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
5. The District or the Commission or both shall semi-annually review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to *O.C.G.A. §12-7-8 (a)*. The District or the Commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion, sedimentation and pollution control program. The District or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.
6. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to *O.C.G.A. § 12-7-8 (a)* has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to *O.C.G.A. §12-7-7 (e)*, the Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 90 days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the county or municipality does not take necessary corrective action within ninety (90) days after notification by the division, the division shall revoke the certification of the county or municipality as a Local Issuing Authority.

Section 35-106

Penalties and Incentives

1. **Failure to Obtain a Permit for Land-disturbing Activity.** If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the Local Issuing Authority.
2. **Stop-work Orders.**
 - A. For the first and second violations of the provisions of this ordinance, the Director or the Local Issuing Authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the Local Issuing Authority shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning;
 - B. For a third and each subsequent violation, the Director or the Local Issuing Authority shall issue an immediate stop-work order; and;
 - C. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
 - D. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the Local Issuing Authority or by the Director or his or her Designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the Local Issuing Authority or by the Director or his or her Designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.
3. **Bond Forfeiture.** If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section 35-104.2.F. The Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
4. **Monetary Penalties.**
 - A. Any person who violates any provisions of this ordinance, or any permit condition or limitation established pursuant to this ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any City charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under county ordinances approved under this ordinance shall be authorized to impose penalties for such violations not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

Section 35-107 Education and Certification

1. Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to *O.C.G.A. §12-7-20*.
2. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.
3. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.
4. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of *O.C.G.A. §12-7-19*, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of *O.C.G.A. §12-7-19* and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Section 35-108 Administrative Appeal Judicial Review

1. **Administrative Remedies.** The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Mayor and Council within fifteen (15) days after receipt by the Local Issuing Authority of written notice of appeal.
2. **Judicial Review.** Any person, aggrieved by a decision or order of the Local Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal denovo to the Superior Court of Oglethorpe County.

Section 35-109 Effectivity, Validity and Liability

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

(Adopted _____)

CHAPTER 36: CONSTRUCTION CODES

Section

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Section 36-101 State Minimum Standard Codes

"State minimum standard codes" shall mean the following codes:

1. Mandatory "State minimum standard codes" shall mean the following codes:
 - A. International Building Code (IBC) - 2006 Edition with Georgia amendments from 2007, 2009, and 2010;
 - B. International Residential Code for One- and Two-Family Dwellings (ICC) - 2006 Edition with Georgia amendments 2011;
 - C. National Electrical Code - 2008 Edition; with Georgia amendments (2009)
 - D. International Mechanical Code (IMC) - 2006 Edition with Georgia amendments 2011;
 - E. International Fuel Gas Code (IFGC) - 2006 Edition with Georgia amendments 2007, 2008, 2009, and 2010;
 - F. International Plumbing Code (IPC) - 2006 Edition with Georgia amendments 2011;
 - G. International Energy Conservation Code - 2009 Edition with Georgia amendments 2011;
 - H. International Fire Code (ICC) - 2006 Edition with Georgia amendments from 2007 and 2010;
 - I. International Energy Conservation Code - 2009 Edition with Georgia Supplements and Amendments 2011.
2. Permissive "State minimum standard codes" shall mean the following codes:
 - A. International Property Maintenance Code - 2006 Edition with Georgia Amendments 2009.
 - B. International Existing Building Code - 2006 Edition with Georgia Amendments 2009.
 - C. National Green Building Standard – 2006 Edition with Georgia Amendments 2011.

Section 36-102 Statewide Application

The state minimum standard codes enumerated in Section 36-101.1 of this code shall have statewide application and shall not require adoption by a municipality. The governing authority of any municipality in this state is authorized to enforce the state minimum standard codes.

Section 36-103 Adoption of Codes by Municipalities

The state minimum standard codes enumerated in numbers 36-102.2 shall not be applicable in a jurisdiction until adopted by a municipality. The governing authority of any municipality in this state is authorized to adopt and enforce the state minimum standard codes in that subject area which is being regulated by the municipality. A copy of the local ordinance or resolution adopting any such code shall be forwarded to the Department of Community Affairs in order that such municipality may be apprized of subsequent amendments in the state minimum standard code so adopted.

Section 36-104 Local Amendments to State Minimum Codes

1. In the event that the governing authority of any municipality or county finds that the state minimum standard codes do not meet its needs, the local government may provide requirements not less stringent than those specified in the state minimum, standard codes when such requirements are based on local climatic, geologic, topographic, or public safety factors; provided, however, that there is a determination by the local governing body of a need to amend the requirements of the state minimum standard code based upon a demonstration by the local governing body that local conditions justify such requirements not less stringent than those specified in the state minimum standard codes for the protection of life and property. All such proposed amendments shall be submitted by the local governing body to the Department of Community Affairs sixty (60) days prior to the adoption of such amendment. Concurrent with the submission of the proposed amendment to the department, the local governing body shall submit in writing the legislative findings of the governing body and such other documentation as the local governing body deems helpful in justifying the proposed amendment. The department shall review and comment on a proposed amendment. Such comment shall be in writing and shall be sent to the submitting local government with a recommendation:
 - A. That the proposed local amendment should not be adopted, due to the lack of sufficient evidence to show that such proposed local amendment would be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require such an amendment;
 - B. That the proposed local amendment should be adopted, due to a preponderance of evidence that such proposed local amendment would be as stringent as the state minimum standard codes and a preponderance of evidence that the local climatic, geologic, topographic, or public safety factors require such an amendment; or
 - C. That the department has no recommendation regarding the adoption or disapproval of the proposed local amendments, due to the lack of sufficient evidence to show that such proposed local amendment would or would not be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require or do not require such an amendment.
2. The department shall have sixty (60) days after receipt of a proposed local amendment to review the proposed amendment and make a recommendation as set forth in Section 36-104(1). In the event that the department fails to respond within the time allotted, the local governing body may adopt the proposed local amendment.
3. In the event that the department recommends against the adoption of the proposed local amendment, a local governing body shall specifically vote to reject the department's recommendations before any local amendment may be adopted.
4. No local amendment shall become effective until the local governing body has caused a copy of the adopted amendment to be filed with the department. A copy of an amendment shall be deemed to have been filed with the department when it has been placed in the United States mail, return receipt requested.
5. Nothing in this subsection shall be construed so as to require approval by the department before a local amendment shall become effective.
6. The department shall maintain a file of all amendments to the state minimum standard codes adopted by the various municipalities and counties in the state, which information shall be made available to the public upon request. The department may charge reasonable fees for copies of such information. An index of such amendments shall be included in each new edition of a state minimum standard code.
7. At the time of issuing a building permit, the issuing county or municipality shall notify the holder of the permit of any local amendments to the state minimum standard codes which are in effect for that county or municipality and that any such amendments are on file with the department. A county or municipality may satisfy this notice requirement by posting or proving a summary of the topic of such local amendment or amendments and the address and telephone number of the department.
8. Except as otherwise provided in this section, building related codes or sections dealing with the subjects of historic preservation, high-rise construction, or architectural design standards for which a state minimum standard code does not exist may be adopted by a local jurisdiction following review by the department. The department's review shall be limited to a determination that the proposed code or

ordinance is consistent with the approved state minimum standard codes when common elements exist and is not less restrictive than the requirement of said codes. Changes to all other state minimum standard codes shall be approved only pursuant to the provisions of this section regarding local amendments.

Section 36-105 Inspection and Permit

1. No local inspector shall require any person performing work in compliance with a state minimum standard code or variations thereto which are in conformity with the provisions of this part to comply with the standards of any other building code not covered by this part.
2.
 - A. In lieu of inspection by an inspector or other person employed by the governing authority of any county or municipality, a licensed master plumber or utility contractor shall have the option of installing a water or sewer line according to the alternative inspection procedure described in this subsection where the installation is on private property outside the building underground.
 - B. If the master plumber or utility contractor elects to utilize this inspection procedure, he or she shall file with the local inspector:
 - (1) Notice that the water and sewer line will be installed in accordance with the Standard Plumbing Code and will be inspected pursuant to the alternative inspection procedure described in this subsection;
 - (2) A copy of his or her master plumber or utility contractor certificate issued by the State Construction Industry Licensing Board;
 - (3) A copy of his or her trenching competent person certificate;
 - (4) A certificate showing that a bond has been filed in accordance with paragraph (2) of subsection (b) of Code Section 43-14-12, except that such bond shall be in the amount of fifty thousand dollars (\$50,000.00) and issued by a surety rated "A", "Class VI," or better by the A.M. Best Company; and
 - (5) Within five (5) business days after completion of the installation, a sworn certification that the water or sewer line has been installed in accordance with the Standard Plumbing Code.
 - C. The department shall promulgate a standard form notice and a standard form certificate that shall be used to administer this subsection. Local inspectors shall make copies of the standard forms available to contractors.
 - D. The master plumber or utility contractor shall be required to pay to the governing authority the applicable permit fee.
 - E. Upon submission of the certification required by this subsection, the local governing authority shall be required to accept the inspection without the necessity of further inspection or approval, except that the local governing authority may perform an inspection at any time and may issue a stop-work order if the work is found to be in violation of code requirements.
 - F. Any other provision of this subsection notwithstanding, the alternative inspection procedure described in this subsection shall be applicable only to installations on private individual single-family residential property.
3.
 - A. Any county or municipal building permit issued in this state to a general contractor or homebuilder for residential or commercial construction shall have prominently printed thereon at least one (1) inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

"The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics' and materialmen's liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances

thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer's guide to the lien laws which may be available at building supply home centers."

- B.** Any county or municipal construction permit, including but not limited to mechanical, plumbing, or electrical permits, issued in this state on existing residential or commercial property shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

"The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics' and materialmen's liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer's guide to the lien laws which may be available at building supply home centers."

- C.** Any person or entity which is issued a permit which authorizes improvements to new or existing residential or commercial real property shall be required to:
- (1) Post a copy of such permit in a conspicuous place in the vicinity of such property where such improvements are being undertaken;
 - (2) Deliver a copy of the permit to the property owner within ten (10) days after the permit is received.

- 4.** A local inspector, including a fire service employee enforcing a state or local fire safety standard, who specifies a code violation noted during an inspection shall, upon the written request of the permit holder, cite in writing the particular code book, section, and edition of the code which is the basis of the violation.

- 5.**
- A.** If a governing authority of a county or municipality cannot provide inspection services within two (2) business days of receiving a valid written request for inspection, then, in lieu of inspection by inspectors or other personnel employed by such governing authority, any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43, and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation, to provide the required inspection.
 - B.** Any inspection conducted by a registered professional engineer shall be no less extensive than an inspection conducted by a county or municipal inspector.
 - C.** The person, firm, or corporation retaining a registered professional engineer to conduct an inspection shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.
 - D.** The registered professional engineer shall be empowered to perform any inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality, provided that the inspection is within the scope of such engineer's branch of engineering expertise.
 - E.** The registered professional engineer shall submit a copy of his or her inspection report to the county or municipality.
 - F.** Upon submission by the registered professional engineer of a copy of his or her inspection report

to the local governing authority, said local governing authority shall be required to accept the inspection of the registered professional engineer without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the registered professional engineer, within two (2) business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the registered professional engineer with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

- G. A local governing authority may provide for the prequalification of registered professional engineers who may perform inspections pursuant to this subsection. No ordinance implementing prequalification shall become effective until notice of the governing authority's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a registered professional engineer on the basis of the engineer's expertise with respect to the objectives of the inspection, as demonstrated by the engineer's experience, education, and training.
- H. Nothing in this subsection shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

Section 36-106 Enforcement of Codes

1. The governing body of any municipality or county adopting any state minimum standard code shall have the power:
 - A. To adopt by ordinance or resolution any reasonable provisions for the enforcement of the state minimum standard codes, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of the state minimum standard codes;
 - B. To provide for inspection of buildings or similar structures to ensure compliance with the state minimum standard codes;
 - C. To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the property enforcement of such codes and to provide for the authority, functions, and duties of such inspectors;
 - D. To require permits and to fix charges therefor;
 - E. To contract with other municipalities or counties adopting any state minimum standard code to administer such codes and to provide inspection and enforcement personnel and services necessary to ensure compliance with the codes; and
 - F. To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the state minimum standard codes within the boundaries of the other contracting party.
2. No local inspector shall require any person performing work in compliance with a state minimum standard code or variations thereto which are in conformity with the provisions of this part to comply with the standards of any other building code not covered by this part.

Section 36-107 Inspectors, Inspections, and Violations

1. As used in this Code section, the term:
 - A. CABO means the Council of American Building Officials.
 - B. Qualified Inspector means:
 - (1) A person inspecting for compliance with the Standard Building Code or the building portion of the CABO One- and Two-Family Dwelling Code who holds a certification from the SBCCI as a building inspector;
 - (2) A person inspecting for the compliance of residential buildings with the National Electrical Code or the electrical portion of the CABO One- and Two-Family Dwelling Code who holds a certification from the SBCCI as a residential electrical inspector or an

- (3) electrical contractor license from the State Construction Industry Licensing Board; A person inspecting for the compliance of nonresidential buildings with the National Electrical Code who holds a certification from the SBCCI as a commercial electrical inspector or an electrical contractor license from the State Construction Industry Licensing Board;
- (4) A person inspecting for compliance with the Standard Gas Code who holds a certification from the SBCCI as a mechanical inspector or plumber, or master plumber license from the State Construction Industry Licensing Board;
- (5) A person inspecting for compliance with the Standard Mechanical Code or the mechanical portion of the CABO One- and Two-Family Dwelling Code who holds a certification from the SBCCI as a mechanical inspector or a conditioned air contractor license from the State Construction Industry Licensing Board;
- (6) A person inspecting for compliance with the Georgia State Plumbing Code, the Standard Plumbing Code, or the plumbing portion of the CABO One- and Two-Family Dwelling Code who holds a certification from the SBCCI as a plumbing inspector or a journeyman plumber or master plumber license from the State Construction Industry Licensing Board;
- (7) A person inspecting for compliance any portion of the CABO One- and Two-Family Dwelling Code who holds a certification from the SBCCI as a one and two-family dwelling inspector;
- (8) A person inspecting for compliance with the Georgia State Energy Code for Buildings who has completed eight (8) hours of training that is conducted or approved by the department; or
- (9) A person inspecting for compliance with any of the codes listed in subparagraphs 1 through 8 of this paragraph who holds a certificate of registration as a professional engineer issued under *O.C.G.A.* Chapter 15 of Title 43 and is practicing within the scope of his or her branch of engineering expertise while conducting such inspection.

C. SBCCI means the Southern Building Code Congress International.

D. State Construction Industry Licensing Board means that board created pursuant to *O.C.G.A.* § 43-14-3.

- 2. The governing authority of any municipality which has adopted provisions for the enforcement of the state minimum standard codes shall post a notice stating whether the personnel employed by that governing authority to conduct inspections for compliance with such codes are qualified inspectors. Such notice shall separately address each minimum standard code enumerated in subdivisions (9)(B)(i)(I) through (9)(B)(i)(VII) of *O.C.G.A.* § 8-2-20 and the building, electrical, mechanical, and plumbing portions of the CABO One- and Two-Family Dwelling Code, and state whether all personnel assigned to conduct inspections for the particular code or portion of the code are qualified inspectors for that code or portion of the code.
- 3. If such notice states that not all personnel assigned to conduct inspections for a particular state minimum standard code or portion of such code are qualified inspectors for that code or portion of the code, then the governing authority may retain qualified inspectors not employed by the governing authority to conduct inspections. If the Mayor and Council does not so retain qualified inspectors, then any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a person who is a qualified inspector for that code or portion of the code and who is not an employee of or otherwise affiliated with or financially interested in such person, firm or corporation to provide the required inspection.
- 4. The person, firm, or corporation retaining a qualified inspector to conduct an inspection pursuant to this section shall be required to pay to the municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.
- 5. A qualified inspector retained pursuant to this section shall be empowered to perform any inspection required by the governing authority of any county or municipality, including but not limited to inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air condition (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality; provided, however, that the qualified

- inspector must possess the qualifications described in paragraph (B) of subsection (1) of this section for the particular type of inspection. Any inspection conducted pursuant to this section shall be no less extensive than an inspection conducted by a county or municipal inspector.
6. Upon submission by the qualified inspector of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the qualified inspector without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the qualified inspector, within two (2) business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the qualified inspector with a written description of the deficiencies and specific code requirements that have not been adequately addressed.
 7. Nothing in this section shall be construed to apply to inspections for compliance with a state or local fire safety standard or erosion control standard.
 8. Nothing in this section shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

Section 36-108 Code Compliance Inspections

1. If the Mayor and Council cannot provide inspection services within two business days of receiving a valid written request for inspection, then in lieu of inspection by inspectors or other personnel employed by such governing authority, any person, firm or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a professional engineer who holds a certificate of registration issued under *O.C.G.A. § Chapter 15 of Title 43*, and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation, to provide the required inspection.
2. Any inspection conducted by a registered professional engineer shall be no less extensive than an inspection conducted by a county or municipal inspector.
3. The person, firm, or corporation retaining a registered professional engineer to conduct an inspection shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.
4. The registered professional engineer shall be empowered to perform any inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the Mayor and Council of any county or municipality, provided that the inspection is within the scope of such engineer's branch of engineering expertise.
5. The registered professional engineer shall submit a copy of his or her inspection report to the county or municipality.
6. Upon submission by the registered professional engineer of a copy of his or her inspection report to the Mayor and Council the Mayor and Council shall be required to accept the inspection of the registered professional engineer without the necessity of further inspection or approval by the inspectors or other personnel employed by the Mayor and Council unless the Mayor and Council has notified the registered professional engineer, within two (2) business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the registered professional engineer with a written description of the deficiencies and specific code requirements that have not been adequately addressed.
7. The Mayor and Council may provide for the prequalification of registered professional engineers who may perform inspections pursuant to this subsection. No ordinance implementing prequalification shall become effective until notice of the governing authority's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a registered professional engineer on the basis of the engineer's expertise with respect to the objectives of the inspection, as demonstrated by the engineer's experience, education, and training.

8. Nothing in this section shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

CHAPTER 37: FRANCHISE ORDINANCE

Section

37-101	Cable Services and other Telecommunication Services Franchising
37-102	Exclusive Franchise Agreement - Natural Gas
37-103	Georgia Power Company Franchise
37-104	Alltel Franchise Ordinance



Section 37-101 Cable Services and other Telecommunication Services Franchising

An ordinance by the City Council of the City of Lexington to provide for the granting of one or more nonexclusive franchises for cable services and other telecommunications services within the municipal boundaries of the City of Lexington and to provide for the process under which said granting of franchises shall take place.

The Council of the City of Lexington hereby ordains that:

Whereas, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the city to grant franchises to companies desiring to provide cable services and other telecommunications services within the territorial boundaries of the city and on the terms and conditions herein, and as may be further described in each franchise agreement;

Whereas, the city has the authority to regulate the occupation and use of the streets (as hereinafter defined); and

Whereas, the city has determined that the grant of franchises to use and occupy the streets for the provision of cable services and other telecommunications services (as hereinafter defined) would promote the health, safety and welfare of the public, stimulate commerce and otherwise serve the public interest; and

Whereas, the city desires to structure and implement a fair and orderly process for the grant of franchises (and renewals of such franchises) to occupy and use the streets to provide cable services and other telecommunications services in the city, including the negotiation of franchise provisions to protect the public interest; and

Whereas, the city intends to exercise, the fullest extent permitted by applicable law, its authority with respect to the regulation of the occupation and use of the streets in connection with the provision of all telecommunications services,

Now, therefore be it resolved that:

The Code of Ordinance of the City of Lexington is hereby amended by creating a new Chapter 37 § 37-101, entitled "Cable Services and other Telecommunications Services Franchising," and shall hereafter read as follows:

1. **Definitions.** For purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words used in the singular number include the plural number.
 - A. **Cable Services.** "Cable services" as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and as may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

- B. **Cable System.** Any "Cable System" as defined in the Cable Act.
 - C. **City.** The City of Lexington.
 - D. **City Council.** The City Council of the city and its designee or any successor thereto.
 - E. **Franchise.** An initial authorization, or renewal thereof, issued by the city, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the occupation and use of the streets to provide telecommunications services.
 - F. **Grantee.** The legal entity to which is granted the right, authority and responsibility to construct, install, operate and maintain a system of equipment as necessary to furnish, supply and distribute cable or telecommunications services or both, to inhabitants within the franchise area.
 - G. **May.** Is permissive.
 - H. **Ordinance.** This ordinance and all modifications and amendments thereto.
 - I. **Person.** Any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the city.
 - J. **Shall.** Is mandatory, not merely directive.
 - K. **Streets.** The surface of, as well as the spaces above and below, any and all streets, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels, parks, parkways, public grounds or waters, and other public rights-of-way within or belonging to the city.
 - L. **Telecommunications Services.** The receipt and/or distribution, through and means, including, without limitation, coaxial cable, optical fiber, or satellite or microwave transmission, of one or more audio, voice or data signals. Telecommunications services includes both cable services and noncable telecommunications services.
2. **Granting Authority and Franchising Procedure.**
- A. **Granting Authority.**
 - (1) No person shall provide cable services or operate a cable system without a franchise granted in accordance with the provisions of this ordinance and no person shall use or occupy the streets to provide any telecommunications service other than cable services without a franchise granted in accordance with the provisions of this ordinance.
 - (2) The City Council may grant one or more franchises in accordance with this ordinance, provided that the City Council reserves the right to modify any provision of this ordinance by amendment thereof.
 - (3) The grant of any franchise shall be made by adoption of a separate ordinance by the City Council and shall be on such terms and conditions as may be specified in said separate ordinance and/or a franchise agreement between the city and the franchisee.
 - (4) Any franchise granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises as it deems appropriate and or itself engage in the provision of telecommunications services.
 - (5) A franchise may be granted for all or any defined portion of the city and for all or less than all telecommunications services, and for telecommunications services for all or less than all purposes.
 - (6) The grant of franchises by the city shall be subject to the provisions of applicable law, such as the provisions in the Communications Act of 1934, as amended, governing cable television franchises and renewals thereof.
 - B. **Franchise Applications.**
 - (1) Applications for franchises shall be submitted in such form and be issued on such terms and conditions as the City Council may determine, subject to applicable law.
 - (2) Any application for a franchise shall contain and/or require the following information with respect to the proposed franchise and such other information as the City Council shall deem necessary or appropriate:
 - (a) Applicant's name, address, telephone number, and federal employer identification number or social security number; copy of applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used by applicant;
 - (b) A detailed statement of the corporation or business entity organization of the applicant, including but not limited to the following, and to whatever extent

required by the city:

- (i) The names and the residence and business addresses of all officers and directors of the applicant;
 - (ii) The names, residence, and business addresses of all persons and entities having any share of the ownership of the applicant and the respective ownership share of each person or entity;
 - (iii) The names and address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to telecommunications or cable systems owned or controlled by the applicant, its parent, and subsidiary, and the areas served thereby;
 - (iv) A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed telecommunications or cable system in the City, or a statement from an independent certified public accountant certifying that the applicant has available sufficient free, net, and uncommitted cash resources to construct and operate the proposed cable or telecommunications system in the city;
 - (v) A detailed financial plan (pro forma) describing for each year of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and sources and uses of funds statement; and
 - (vi) A statement identifying, by place and date, any other cable system or telecommunication franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such franchised cable or telecommunication system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;
- (c) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:
- (i) A description of the cable services and any other telecommunications services proposed to be provided;
 - (ii) A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;
 - (iii) A statement or schedule setting forth all proposed classifications or rates and charges to be made against subscribers and all rates and charges as to each said classifications, including installation charges, cable service charges, and any other telecommunications service charges;
 - (iv) A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant;
 - (v) A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and

- (vi) any subscriber to cable or telecommunications services; and
 - (vii) A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise;
 - (d) A copy of any agreement covering the franchise area, if existing between the applicant and any utility providing for the use of any facilities of the utility, including but not limited to, poles, lines, or conduits; and
 - (e) Any other details, statements, supplementary information, or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any other provision of law.
- (3) **Non-refundable Application Fees for New Franchises.** No application for a new franchise shall be considered without payment by the applicant of application fees as provided in this Section 1. If a franchise is granted, application fees will not be deemed a credit toward any other fees or sums due by the Grantee. If an application is denied, the application fee will not be refunded.
- (a) **Purpose of Application Fees.** The application fees provided by this Section will serve to cover the direct and indirect costs incurred by the city in processing the application, evaluating the applicant, and granting a franchise, and shall include, but not be limited to, administrative, engineering, publication, legal, and consultant's expenses.
 - (b) **Application Fee.** The applicant will be expected to pay the reasonable costs of the city in evaluating the application. Notwithstanding any other requirement of this ordinance, each applicant must furnish with its proposal a non-refundable application fee in the amount of _____ (\$_____) by certified check or cashier's check made payable to the City of Lexington.
- C. **Responsibilities of Applicants.** It shall be the responsibility of each applicant for a franchise to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the city and any federal, state or local governmental authority having jurisdiction.
- D. **Public Availability of Applications.** To the extent determined by the City Council, applications for franchises, including any additions, modifications or amendments thereto, shall be available for public inspection at a designated city office during normal business hours.
- E. **Evaluation Criteria.** In making any determination hereunder as to any application for a franchise, the city council may consider such factors as it deems appropriate and in the public interest, including, without limitation:
- (1) The adequacy of the proposed compensation to be paid to the city, including the value of any facilities and telecommunications services offered by the applicant to the city;
 - (2) The legal, financial, technical and other appropriate qualifications of the applicant;
 - (3) The ability of the applicant to maintain the property of the city in good condition throughout the term of the franchise;
 - (4) The value and efficiency to the city and its residents of the cable services and other telecommunications services to be provided, including the type of telecommunications services to be provided, as well as alternatives to those services and services that may be precluded by the grant of the franchise;
 - (5) The willingness and ability of the applicant to meet construction any physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the franchise; and
 - (6) Any other public interest factors or considerations deemed pertinent by the city for safeguarding the interest of the city and the public.
- F. **Procedure for Consideration of and Action on Applications.**
- (1) The city may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for franchises and determine whether a franchise should be granted to an applicant, and may require the applicant to furnish additional information and data for

this purpose. In considering applications, the City council may seek advice from other city officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or form the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications.

- (2) If the City Council, after considering such information as it determines to be appropriate, elects to further consider one or more applications, the city council shall set one or more public hearings for consideration of the applications(s), fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or objections thereto may file written comments and appear before the City Council and be heard, and providing notice of such public hearing(s) in accordance with applicable law.
- (3) The City council may authorize negotiations between city officials and applicants to determine whether the city and such applicants are able to reach agreement on the terms of the proposed franchise.
- (4) Upon completion of the steps deemed appropriate by the City council, the City Council may grant the franchise, and may specify the conditions under which the franchise is granted. Alternatively, the city may reject any and all applications from whatever source and whenever received except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. The city also reserves the right to waive any or all requirements when it determines that the best interest of the city may be served thereby and may, if it so desires, request new or additional proposals.

G. Terms and Conditions of Franchise.

- (1) The terms and conditions applicable to any franchise granted pursuant to this ordinance shall be set forth in the separate ordinance granting the franchise or in a separate ordinance granting the franchise or in a separate written agreement. Such separate ordinance or written agreement, among other things, shall address the following subjects:
 - (a) The term of the franchise;
 - (b) The franchise area and the cable service and other telecommunications services and purposes of such other telecommunications services, if any, which are the subject of the franchise.
 - (c) The compensation to be paid to the city, which may include the payment of fees or the provision of facilities or services, or both;
 - (d) The circumstances upon which the franchise may be terminated or cancelled;
 - (e) The mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the franchisee's obligations under the franchise.
 - (f) The city's right to inspect the facilities and records of the franchisee;
 - (g) Insurance and indemnification requirements applicable to the franchisee;
 - (h) The obligation of the franchisee to maintain complete and accurate books of account and records, and the city's inspection rights with respect thereto;
 - (i) Provisions to ensure quality workmanship and construction methods;
 - (j) Provisions to ensure that the franchisee will comply with all applicable city, state and federal laws, regulations, rules and policies, including, without limitation, those related to employment, purchasing and investigations;
 - (k) Provisions to ensure adequate oversight and regulation of the franchisee by the city;
 - (l) Provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the city;
 - (m) Remedies available to the city to protect the city's interest in the event of the franchisee's failure to comply with terms and conditions of the franchise;
 - (n) Provisions to ensure that the franchisee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the franchisee, including the

- (o) federal communications commission;
- (p) Provisions to ensure that the franchisee will protect the property of the city and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the franchise;
- (q) Provisions designed to minimize the extent to which the public use of the streets of the city are disrupted in connection with the construction of improvements relating to the franchise; and
- (r) Such other provisions as the city determines are necessary or appropriate in furtherance of the public interest.

3. General Provisions.

- A. Severability.** If any section, subsection, sentence, clause, phrase or other portion of this ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- B. Delegation.** Consistent with applicable law, the City Council shall have the right to delegate and redelegate, and to revoke any such delegation or redelegation, from time to time, any of its rights or obligations under this ordinance to any body, organization or official. Any such delegation, redelegation or revocation, no matter how often made, shall not be deemed an amendment to this ordinance or to require the consent of any applicant for a franchise or franchisee. The City Council may also establish and appoint one or more advisory boards, with such duration and such number of members as the City Council shall determine, to advise it on such of the matters which are the subject of this ordinance.

This ordinance shall not be retroactively applied to franchises for cable services and other telecommunications services existing on the effective date of this ordinance.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 37-102 Exclusive Franchise Agreement - Natural Gas

This agreement made February 9, 1995, by and between the City of Lexington, Georgia (herein designated as the "city"), and Tri-County Natural Gas System, a partnership comprised of the City of Union Point, Georgia and the City of Greensboro, Georgia (herein designated as the "Operator") of the premises herein described as follows:

That natural gas system lying along and through all those certain parcels, streets and acreage lying within the city limits of the City of Lexington, State of Georgia, as currently constituted as of the date of this agreement, together with any property subsequently annexed to said city.

Whereas, the city is the governing authority and sole owner of the franchise right for a gas system in said premises; and

Whereas, the operator wishes, upon the terms and conditions herein below set forth, to enter into the business of the supplying and selling of natural gas to customers within the city limits of Lexington, Georgia in accordance with standards of construction, operation and services meeting the standards in the natural gas business; and

Whereas, the operator wishes to operate a gas system without responsibility upon the city for the operation of said gas system within the city limits of Lexington, Georgia, upon the terms and conditions herein below set forth.

Now therefore, the parties hereto in consideration of the mutual agreements herein contained and promises herein expressed, satisfactory and adequate, do agree as follows:

1. Franchise Granted.

- A.** The city gives and grants to the operator for a period of twenty-five (25) years from the date

hereof and for any extensions thereof as hereinafter provided, a franchise or license to transport and sell on the premises herein above described, natural gas under the name of Tri-County Natural Gas System in accordance with the terms, conditions, agreements and restrictions hereinafter set forth.

- B. In the conduct of the said business, the said operator shall have the exclusive full right and authority during the period within which it is operating the said business to sell gas in the city.
 - C. This agreement shall cover a territory that shall be encompassed within the city limits of Lexington, Georgia.
 - D. Within the territory aforesaid, the rights of the operator, while this agreement remains in full force and effect shall be exclusive and absolute, and the city will not operate or permit any other person or corporation with is agreement to operate within said territory, any natural gas system or sales which shall be the same as or similar to the business conducted by the operator pursuant to this agreement.
 - E. The city does hereby grant to the operator all necessary permits and easements in the premises which are required by the operator for the installation and maintenance of the operator's gas system.
2. **Standards of Operation by Operator.** So long, and only so long as this agreement shall remain in force and effect, the operator, as a condition of the granting of this franchise shall operate the natural gas system in accordance with the standards for safety and service available in the industry.
3. **Royalty Fees.** In consideration of the issuance of this franchise, the operator agrees to pay the city the following:
- A. A royalty fee of three percent (3%) of the operator's gross receipts derived from the sale of natural gas within the franchise area.
 - B. Such royalty fees shall be paid within thirty (30) days after the end of each annual period during the term of any extension thereof.
4. **Books and Records.**
- A. The operator agrees to submit to the city annual statements showing the amounts of natural gas sold by the operator during the previous year. All such statements shall be signed by the operator certifying the gross receipts for the year accounted for.
 - B. The operator shall keep true and accurate records, accounts, books and data which shall accurately reflect in all particulars relating to the natural gas business of the operator. The city's agents or representatives may examine and audit the records, accounts and books at all reasonable times.
 - C. The term "gross receipts" shall include gross amounts by the operator as payment for natural gas services without deduction for operating expenses and the cost of natural gas to the operator.
5. **Liability.**
- A. The operator agrees during the term of this agreement to procure, carry and pay for vehicle liability insurance on any and all vehicles used by the operator.
 - B. The operator agrees to protect, indemnify and save harmless the city from any and all loss, damage, liability or attorney's fees and costs incurred by the city because of:
 - (1) Any act or neglect of the operator or any of its agents, servants, employees or guests, in, on or about the above described premises.
 - (2) Any other reasons so long as such loss, damage, liability or attorney's fees resulted from the franchise herein granted, and was not the fault of the city.
 - C. The operator further agrees to keep in place with an approved insurance company, and keep in effect during the life of this agreement, insurance for the benefit of the operator, covering public liability of all kinds amounts no less than one million dollars (\$1,000,000.00) in case of damage or injury to one or more persons or property.
 - D. The operator further agrees to place with an approved insurance company and keep in effect during the life of this agreement, all workmen's compensation insurance on its employees.
 - E. The operator shall provide to the city certificates of all such insurance and will promptly pay all premiums on such policies when the same becomes due.
6. **Continuance of Operation.** Throughout the term of this agreement, the operator will not discontinue the operation of the natural gas system within the premises.
7. **Additions, Alterations and Maintenance of the Premises.** The operator will repair and maintain the

natural gas system within the premises together with any and all buildings and structures and property thereof in good and sufficient order and repair, and in accordance with the standards for safety and maintenance required within the industry.

8. Rights and Obligations of Parties on Termination.

A. Upon the sale or transfer by the operator of the franchise, the rights and obligations hereunder of said operator shall terminate except in regard to the obligations of the operator to take action or abstain from taking action after the termination hereof in accordance with this agreement.

B. If the operator shall become in default on any mortgage or deed of trust, covering the described premises, or shall be adjudicated as bankrupt or shall make an assignment for the benefit of creditors, or if a receiver shall be appointed to take charge of the operators affairs, or if the operator shall default in the performance of any covenant or agreement made hereunder as to standards of operation, safety, or other regulations, payments of amounts due hereunder or otherwise, and such default shall not be remedied with thirty (30) days after notice of such default, then the city may thereupon terminate this agreement and all rights hereunder of the operator , but such termination shall not affect the obligations of the operator to take action or abstain from taking action after termination hereof in accordance with this agreement.

9. Term and Renewal of the Agreement. Unless terminated as heretofore provided, this agreement shall remain in effect for twenty-four (24) years after the date the first royalty fee payment is due as provided in subsection III hereof, and shall thereafter be extended from year to year unless at least ninety (90) days before the expiration of the term of any extension thereof notice of intention to finally terminate is given in writing by one party to the other.

10. The operator does represent unto the city:

A. The operator is a partnership comprised of municipal corporations of the State of Georgia duly chartered and active.

B. That the operation of the natural gas system and the acceptance of this franchise has been duly authorized by proper council action and that the meetings as which such action was taken were properly called in accordance with the laws of the State of Georgia and the charter of the city.

11. The city represents to the operator:

A. That the city is a municipal corporation of the State of Georgia duly chartered and active.

B. That the granting of the franchise herein for the operation of the natural gas system in the premises has been duly authorized by proper council action and that the meetings at which such action was taken were properly called and conducted in accordance with the laws of the State of Georgia and the charter of the city.

12. Financial Liability of City and Operator.

A. The city and the operator are not and shall not be considered as joint ventures, partners or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in this agreement.

B. There shall be no liability on the part of the city to any persons for debts incurred on behalf of the described premises and business conducted therein, unless the city agrees in writing to pay such debts.

C. The city shall not have and does not have any control over the operator as to the methods of the operator's operation of the natural gas system for the premises.

13. Notices.

As to the operator: City of Union Point
 P.O. Box 233
 Union Point, Georgia 30669
 Attn: Wayne Jackson, City Clerk & Treasurer

As to the city: City of Lexington
 P.O. Box 35
 Lexington, GA 30648
 Attn: Mayor

14. Any waiver by the city of any particular default by the operator shall not affect or impair the city's rights in respect to any subsequent default of the same or of a different kind; nor shall any delay or omission of the

city to exercise any right arising from any default, affect or impair the city's rights as to the same or any future default.

15. This agreement shall be governed and construed in accordance with the laws of the State of Georgia.

All terms and words used in this agreement, regardless of the number and gender in which they are used shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this agreement or any paragraph or clause herein may require the same as if such words have been fully and properly written in number and gender.

This agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute the one and the same instrument.

This instrument contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise not embodied herein shall be of any force or effect. No failure of the city to exercise any power given it hereunder or to insist upon strict compliance by the operator of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the city's right to demand exact compliance with the terms hereof.

16. Should any part of this agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this agreement without including therein any such part, parts or portion, which may for any reason be hereafter declared invalid.

17. All rights under this agreement shall insure to the benefit of the successors and assigns of the city.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first herein written.

Section 37-103 Georgia Power Company Franchise

Ordinance granting permission and consent to the Georgia Power Company, its successors, lessees and assigns, to occupy the streets and public places of the City of Lexington, Georgia in constructing, maintaining, and extending poles, lines and appliances for transmitting and distributing electricity, and for other purposes.

1. Be it ordained by the Mayor and Council of the City of Lexington, Georgia (hereinafter referred to as the "city"), that the authority, right, permission and consent are hereby granted to the Georgia Power Company, its successors, lessees and assigns, for a period of _____ years, to occupy and use the streets, alleys and public places of the city within the present and future limits of the said city as from time to time the said Georgia Power Company, its successors, lessees and assigns, may deem proper or necessary for the erection and maintenance of poles, towers, lines, wires, cables, insulators, transformers and all appliances or connections for the business and purpose of transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as may be necessary for the extension, operation, repair and renewal of the same or any portion thereof, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the company, to insure safe and efficient service.
2. Be it further ordained that the rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions, to-wit:
 - A. The said Georgia Power Company, its successors, lessees and assigns, shall pay into the treasury of the city on or before the first day of March each year, beginning with the year 1966, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission), within the corporate limits of the city for the preceding calendar year, so long as the city itself shall not engage in any such competing utility business; and on condition that in the event said city shall grant to any other corporation the right to use and occupy its streets for like

purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment of a license, privilege or occupation tax in an amount at least equal to that herein specified.

- B. The payment of the percentage of gross sales above provided for shall be in lieu of all occupation, license, excise and special franchise taxes, and in full of all money demands and charges, except ad valorem taxes on property and license taxes on the sale of appliances; and whatever amount, if any, shall at any time be required or exacted of the benefit of the city on any of said accounts or on any account, other than ad valorem taxes on property and license taxes on the sale of appliances, shall operate to reduce to that extent the amount due from the percentage above provided for.
 - C. That should the city itself ever at any time construct, purchase, lease, acquire, own, hold, use or operate an electric lighting or power plant and/or distribution system, then and in that event the payment of the percentage of gross sales herein provided to be paid by the Georgia Power Company, its successors, lessees and assigns, shall abate, cease, and be no longer due, and shall forever thereafter be uncollectible.
 - D. That the work of erecting poles and all other work upon the streets and public places of said city shall be done under the supervision of the Mayor and Council (or other legally constituted governing body) of said city, and that all sidewalks or street pavements or street surface which may be displaced by reason of such work shall be properly replaced and relaid by the said Georgia Power Company, its successors, lessees and assigns, to the satisfaction of the Mayor and Council (or other legally constituted governing body) of said city.
 - E. That the Georgia Power Company, its successors, lessees and assigns, shall fully protect, indemnify and save harmless the city from all damages to person or property caused by the erection or maintenance of poles, wires, or other works, or condition of streets, alleys or public places resulting therefrom for which the said city would otherwise be liable or on account of which judgment may be rendered against the said city.
 - F. The said Georgia Power Company, its successors, lessees and assigns, shall further, in constructing and maintaining its system of overhead lines, poles, wires and other structures, submit and be subject to all reasonable police laws, rules and regulations of said city for the regulation or control of such structures.
3. Be it further ordained that all laws and ordinances in conflict herewith be and the same are hereby repealed.

(Approved 4/14/65)

Section 37-104 Alltel Franchise Ordinance

An ordinance granting a franchise to Alltel GA, Inc., its successors and assigns, to construct, erect, operate, maintain and own a telecommunications system in, upon, along, across, above, over, and under the public ways of the City of Lexington, Georgia; and all such structures appliances and fixtures necessary or convenient for rendition of telecommunications services, including local and long distance telephone service; to provide the conditions governing the grant of said franchise; to provide for franchise fees to be paid; and for other purposes.

Whereas, the city desires to grant a franchise to Alltel GA, Inc., its successors and assigns, to construct, erect, operate, maintain and own a telecommunications system ("system") in, upon, along, across, above, over and under the public ways of the city, for the purpose of rendering telecommunications service, and to provide for the conditions governing the grant of said franchise; to provide for franchise fees to be paid by Alltel GA, Inc., its successors and assigns, and for other purposes;

- 1. **Short Title.** This ordinance shall be known and may be cited as the "Telecommunications Franchise Ordinance".
- 2. **Definitions.**
 - A. For the purposes of this ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein. The word "shall" is always mandatory and not merely a directory.
 - (1) **Basic Local Service.** The provision to residential and single line business customers in

Georgia of services composed of a touch tone switched access line and dial tone, of quality sufficient for two way voice and 9600 baud data/fax communications. The service shall include 1 + dialing for access to competitive providers of telecommunications services.

(2) **City.** City of Lexington.

(3) **Company.** Alltel GA, Inc., a Georgia corporation and the grantee of the rights under this franchise.

3. **Grant of Authority.** There is hereby granted by the city to the company, subject to the terms and conditions hereinafter set forth, a franchise for the right and privilege to construct, erect, operate, maintain and own a system, including all poles, wires, cables, fibers, underground conduits, manholes, and other telecommunications fixtures and appliances necessary or convenient for the construction, maintenance and operation in the city of the system and any lines connected therewith, including, but not limited to, the rendition of local and long distance telephone service, in, upon, along, across, above, over and under the public ways now laid out or dedicated, and all extensions thereof and additions thereto, located within the city.
4. **Non-Exclusive Grant.** Nothing herein contained shall be construed as giving the company any exclusive privilege at any time during the term of this franchise.
5. **Compliance with Applicable Laws and Ordinances.** The company shall, in connection with the protection of the health and safety of the public, during the term of this franchise, be subject to the lawful exercise of the police power by the city and to such reasonable regulations governing public ways as the city shall hereafter by resolution or ordinance promulgate. Every installation by the company shall be in accordance with the applicable codes then in force in the city.
6. **Availability of Rates, Terms and Conditions.** The company shall have the option of modifying the provisions of this agreement to be consistent with the provisions of any franchise agreement subsequently entered into between the city and any other telecommunications service provider.
7. **Company Liability - Indemnification.** It is expressly understood and agreed by and between the company and the city that each, as an indemnifying party, shall hold the other, as an indemnified party, harmless from all loss sustained by the indemnified party, on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the indemnifying party in the construction, operation, or maintenance of the system in the city. In the event any claim or action is brought against a party for which the other might be liable as an indemnifying party under this Section, the indemnified party shall promptly give notice to the indemnifying party of such claim or action and a description of the source and nature thereof. Failure to promptly give such notice shall relieve the indemnifying party of any liability thereunder with respect to the claim or action of which such notice was not properly given. Upon timely notice of any claim or action within the scope of this Section, the indemnifying party shall have the right (but no the obligation) to negotiate a settlement or compromise (any such settlement or compromise being subject to the approval of the indemnified party, which approval shall not be unreasonably withheld) of any such claim or action, or to defend actions instituted at the sole cost and expense of the indemnifying party.
8. **Conditions on Street Occupancy.**
 - A. **Use.** The company shall have the right to determine the number and location of all transmission and distribution structures, lines and equipment for the proper operation of the system on the public ways, and the company shall locate such system as is reasonable under the particular circumstances to cause minimum interference with the proper use of public ways. The city shall not grant any requests for any use or occupancy of public ways in proximity to the system that would conflict with the company's use or occupancy herein permitted or take any action that would be inconsistent or adverse to the company's use or occupancy of the system.
 - B. **Restoration.** In case of any disturbance by company of pavement, sidewalk, driveway or other surfacing of the city, the company shall at its own cost and expense, replace and restore all sidewalk, driveway or surface of any street or alley disturbed, to as reasonably good a condition as before said work was commenced.
 - C. **Relocation.** In the event that at any time during the term of this franchise, the city in its governmental capacity shall lawfully elect to alter or change its public ways, the company, as reasonably necessary to maintain its system, and upon reasonable notice by the city, shall relocate or adjust its poles, wires, cables, underground conduits, manholes, or other fixtures. If

the city's request for relocation occurs on or within the first three (3) years of this franchise, or on or within three (3) years of the installation of the facilities, whichever is later, the cost of relocation shall be at the city's expense. Subject to the provisions of Section 6 above, if the city's request for relocation occurs after the times and circumstances described above, the company agrees to bear the reasonable expenses incurred by it in its complying with this provision. The city cannot, in its governmental capacity or otherwise, require the company to bury its system or a portion thereof, including but not limited to cables and wires unless the city agrees to bear the cost for such relocation. The company shall not be liable for the payment of any expenses incurred by it in the event the company is required to adjust or relocate its poles, wires, cables, underground conduits, manholes, and other telephone fixtures, where such alteration is made necessary by an act of the city in its proprietary, non-governmental capacity or due to actions of a third party.

- D. **Utility Pole and Use Rental.** The company shall have the right to use utility poles erected by the city upon obtaining prior permission from the city manager or Mayor for the city.
 - E. **Tree Trimming.** The company may trim trees upon and overhanging the public ways as to prevent the branches of the trees from coming in contact with the wires, cables or facilities of the company.
9. **Approval of Transfer of this Franchise.** The company shall have the right to transfer or assign this franchise effective upon the assignee or transferee filing in the office of the City Clerk an instrument, lawfully executed, reciting the fact that such assignee or transferee has accepted this franchise and agreeing to be bound by each and every one of the terms and provisions hereof.
 10. **Supervision and Inspection.** The city shall have the right to inspect all work performed by the company on, along, in, or across any of the public ways of the city to ensure compliance with the rules and regulations of the city, and any pertinent ordinances, governing installations which affect, or might affect, such public ways. The company shall maintain its system in reasonable operating condition at all normal times during the term of this franchise. An exception to this condition is automatically in effect when service furnished by the company is interrupted, impaired, or prevented by fires, strikes, riots or other occurrences beyond the control of the company, or by storms, floods, or other casualties, in any of which events the company shall do all things reasonably within its power to restore normal service.
 11. **Term of Franchise.** The franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the company with the city clerk, and shall continue in force and effect for a term of ten (10) years after the effective date of this franchise.
 12. **Payment to City.** The company shall pay to the city in consideration of this franchise an annual amount equal to three percent (3%) of its recurring basic local service revenue derived from subscribers of telephone service who are located within the corporate limits of the city. The company may, to the extent allowed by law, bill its subscribers within the corporate limits of the city such franchise fee and reflect such charge on its invoices to subscribers within the corporate limits of the city. The payments required by this Section shall be due on April 15 of each year for the previous year's revenues, throughout the term of this franchise, except that the first payment shall be for that portion of the prior year subsequent to acceptance by the company of this franchise.
 13. **Adjustments to Franchise Fees.** The amount, if any, of a tax, fee, charge or imposition of any kind required, demanded or exacted by or on behalf of the city on any account, other than ad valorem taxes on property, shall operate to reduce to the extent of such tax, fee, charge or imposition the amount due from the percentage of revenues as provided in Section 12 above.
 14. **Penalties.** A material violation by the company of the terms of this franchise and a refusal by the company, after notification by the city, to rectify such violation as quickly as is reasonably possible under the circumstances, shall authorize the city to cancel this franchise.
 15. **Partial Invalidity and Repeal Provision.** If any section, sentence, clause, or phrase of this ordinance is for any reason held to be illegal, ultra vires, or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this ordinance if the invalidity does not substantially alter the meaning thereof. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed.
 16. **Acceptance of Agreement.** The company shall have sixty (60) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the city clerk, and upon such

acceptance being filed, this ordinance shall take effect and be in force from and after the date of this passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

CHAPTER 38: WATER CONSERVATION ORDINANCE

Section

Article I. Required Fixtures To Be Used in Construction

38-101	Definitions
38-102	Residential Building Construction
38-103	Commercial Building Construction
38-104	Residential/Commercial Construction
38-105	Exemptions
38-106	Enforcement; Penalty

Article II. Outdoor Water Use Ordinance

38-201	Intent and Purpose
38-202	Definitions
38-203	Landscape Irrigation Schedule
38-204	Exceptions to the Landscape Irrigation Schedule
38-205	Application of Ordinance
38-206	Enforcement
38-207	Penalty



Article I. Required Fixtures To Be Used in Construction

Section 38-101 Definitions

1. **Commercial.** Any type of building other than residential.
2. **Construction.** The erection of a new building or the alteration of an existing building in connection with its repair or renovation or in connection with making an addition to an existing building and shall include the replacement of a malfunctioning, unserviceable, or obsolete faucet, showerhead, toilet, or urinal in an existing building.
3. **Residential.** Any building or unit of a building intended for occupancy as a dwelling but shall not include a hotel or motel.

Section 38-102 Residential Building Construction

No construction may be initiated within the City of Lexington for any residential building of any type which:

1. Employs a gravity tank-type, flushometer–valve, or flushometer–tank toilet that uses more than an average of 1.6 gallons of water per flush;
2. Employs a shower head that allows a flow of more than an average of 2.5 gallons of water per minute at sixty (60) pounds per square inch of pressure;
3. Employs a urinal that uses more than an average of 1.0 gallons of water per flush;
4. Employs a lavatory faucet or lavatory replacement aerator that allows a flow of more than 2.0 gallons of water per minute; or
5. Employs a kitchen faucet or kitchen replacement aerator that allows a flow of more than 2.5 gallons of water per minute.

Section 38-103 Commercial Building Construction

There shall be no construction of any commercial building initiated within the City of Lexington for any commercial building of any type which does not meet the requirements of Section 38-102.

Section 38-104 Residential/Commercial Construction

The requirements of Section 38-102 shall apply to any residential construction and any commercial construction, which involves the repair or renovation of or addition to any existing building when such repair or renovation of or addition to such existing building includes replacement of toilets or showers or both.

Section 38-105 Exemptions

New construction and the repair or renovation of an existing building shall be exempt from the requirements of Sections 38-102, 103, and 104 of this chapter when:

1. The repair or renovation of the existing building does not include the replacement of the plumbing or sewage system servicing toilets, faucets or showerheads within such existing buildings; or
2. When such plumbing or sewage system within such existing building, because of its capacity, design, or installation would not function properly if the toilets, faucets or showerheads required by this chapter were installed; or
3. Such system is a well or gravity flow from a spring and is owned privately by an individual for use in such individual's personal residence; or
4. Units to be installed are:
 - A. Specifically designed for use by the handicapped;
 - B. Specifically designed to withstand unusual abuse or installation in a penal institution; or
 - C. Specifically designed as toilets for juveniles.

The owner, or his agent, of a building undergoing new construction or repair or renovation who is entitled to an exemption as specified in subparagraphs 2, 3, or 4 of this section shall obtain the exemption by applying at the office of the building inspector for the City of Lexington. A fee of as determined by the Mayor and Council shall be charged for the inspection and issuance of such exemption.

Section 38-106 Enforcement; Penalty

This chapter shall be enforced by the office of the building inspector of the City of Lexington. Citations for violations may be issued by the Building Inspector of the City of Lexington.

Any person, corporation, partnership or other entity violating this chapter shall be tried before the City of Lexington Municipal Court. Upon conviction, a violation of this chapter may be punished by a fine not to exceed one hundred dollars (\$100.00) or imprisonment not to exceed ninety (90) days.

Article II. Outdoor Water Use Ordinance

Section 38-201 Intent and Purpose

1. It is the intent and purpose of this Ordinance to implement procedures that promote water conservation through more efficient landscape irrigation.

Section 38-202 Definitions

1. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

Section 38-203 Landscape Irrigation Schedule

1. Persons may irrigate outdoors daily for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants only between the hours of 4 P.M. and 10:00 A.M.

Section 38-204 Exceptions to the Landscape Irrigation Schedule

1. Section 38-203.1 shall not create any limitation upon the following outdoor water uses:
 - A. Commercial agricultural operations as defined in O.C.G.A. Section 1-3-3;
 - B. Capture and reuse of cooling system condensate or storm water in compliance with applicable local ordinances and state guidelines;
 - C. Reuse of gray water in compliance with O.C.G.A. Section 31-3-5.2 and applicable local board of health regulations adopted pursuant thereto;
 - D. Use of reclaimed waste water by a designated user from a system permitted by the Environmental Protection Division of the department to provide reclaimed waste water;
 - E. Irrigation of personal food gardens;
 - F. Irrigation of new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation;
 - G. Drip irrigation or irrigation using soaker hoses;
 - H. Hand watering with a hose with automatic cutoff or handheld container;
 - I. Use of water withdrawn from private water wells or surface water by an owner or operator of property if such well or surface water is on said property;
 - J. Irrigation of horticultural crops held for sale, resale, or installation;
 - K. Irrigation of athletic fields, golf courses, or public turf grass recreational areas;
 - L. Installation, maintenance, or calibration of irrigation systems; or
 - M. Hydroseeding.

Section 38-205 Application of Ordinance

1. The provision of this Article shall apply to each person located within the jurisdictional limits of the City of Lexington. No person shall use or allow the use of water in violation of the restrictions on outdoor water use contained in this Article.

Section 38-206 Enforcement

1. The Oglethorpe County Code Enforcement Officer or his/her designee, is hereby authorized, empowered and directed to enforce compliance with this Article.

Section 38-207 Penalty

1. Violation of any provision of this Article shall be subject to the following penalties:
 - A. First Violation: Written Warning
 - B. Second Violation: \$50.00
 - C. Subsequent Violation: \$500.00
2. Each day in violation of this Ordinance shall constitute a separate offense. Enforcement officials shall provide violators with no more than one written warning. In addition to the civil sanctions contained herein, the City may take any other appropriate legal action, including, but not limited to, injunctive action to enforce the provisions of this Article. Any violation of this section may also be enforced by a citation or accusation returnable to the Municipal Court or by any other legal means as set forth in this Code.

CHAPTER 39: LAND DEVELOPMENT REGULATIONS

Section

39-101	Zoning Regulations
39-102	Manufactured Housing and Mobile Homes
39-103	Comprehensive Plan
39-104	Solid Waste Management Plan
39-105	Land Use Dispute Resolution
39-106	Subdivision Regulations



Section 39-101 Zoning Regulations

The Zoning Regulations of the City of Lexington, effective November 12, 1983 as amended, are incorporated by reference as if fully set out herein.

Section 39-102 Manufactured Housing and Mobile Homes

1. **Intent.** The purpose of this ordinance is to safeguard life, public health, property and welfare by establishing minimum standards for the construction and installation of all manufactured housing and mobile homes locating or relocating within the City of Lexington.
2. **Requirements.** All manufactured housing and mobile homes locating or relocating within the City of Lexington:
 - A. Shall require a building permit issued by the Mayor and City Council of Lexington or their designated Code Enforcement Official prior to the placement of any manufactured housing or mobile home; and
 - B. Shall be connected to a water and sewerage system which meets the regulations of the Oglethorpe County Health Department. Individual or community onsite septic systems shall require site and sewage system approval by the county sanitarian prior to the issuance of a building permit; and
 - C. Shall comply with all other applicable city codes and ordinances as may be in effect, including, but not limited to, lot size, setbacks, and all other requirements of the district in which it is located; and
 - D. Shall be constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401, et seq., bearing an insignia or sticker of approval issued by the U.S. Department of Housing and Urban Development (HUD) that is usually found on a red label at the rear of the home near the tail light (the HUD standards are administered in Georgia by the Office of the State Fire Marshall); or shall conform to the American National Standards Institute (ANSI) 119.1 (1975), also cited as National Fire Protection Association (NFPA) Code 501(b); and
 - E. Shall be installed according to the manufacturer's installation instructions, when available, or Appendix "h" of the Standard Building Code of the State of Georgia (the stricter shall apply) and shall include the use of approved tiedowns and ground anchors able to withstand winds of 100 miles an hour, so as to resist wind overturning and sliding; and
 - F. Shall be inspected and approved by the Building Inspector or the designated Code Enforcement Official prior to the issuance of a certificate of occupancy.
3. **Existing Manufactured Housing and Mobile Homes.** Any manufactured housing or mobile home which has already been located in the City of Lexington and returned for taxed prior to the date of the adoption of this ordinance and that does not meet the construction certification requirements as specified in Section II, paragraph D, herein, may be moved within the city provided it has been inspected and approved by the Building Inspector or the designated Code Enforcement Official, and all other requirements as specified herein are met.

(Effective 6/8/95)

Section 39-103 Comprehensive Plan

The Joint City/County Comprehensive Plan for Oglethorpe County and the cities of Arnoldsville, Crawford, Lexington and Maxeys, dated April 1995, and as may be amended, is incorporated by reference as if fully set out herein.

Section 39-104 Solid Waste Management Plan

The Northeast Georgia Solid Waste Management Plan of June 1993, and as may be amended, is incorporated as if fully set out herein.

Section 39-105 Land Use Dispute Resolution

The Joint County Municipality Land Use Classification Dispute Resolution Process set forth in Exhibit "A" is hereby adopted by the Mayor and City Council of the City of Lexington as the land use classification dispute process which will be followed to resolve land use classification disputes when the county objects to a proposed land use of an area to be annexed into a municipality within the county.

EXHIBIT "A"
JOINT COUNTY MUNICIPALITY LAND USE
CLASSIFICATION DISPUTE RESOLUTION PROCESS

The Board of Commissioners of Oglethorpe County, Georgia and the Governing Authority of each of the municipalities within Oglethorpe County ("County") have agreed to adopt the following Joint County Municipality Land Use Classification Dispute Resolution Process to resolve land use classification disputes when a county objects to the proposed land use of an area to be annexed into a municipality within the county.

The county and the municipalities within the county agree that they currently have a joint Commission, the Oglethorpe County Planning Commission, serving the county and the municipalities of Arnoldsville, Crawford, Lexington, and Maxeys, and which may serve as a mechanism for reviewing land use classifications prior to disputes arising. However in the event that a potential land use classification dispute arises when a municipality annexes property that has not been resolved prior to the annexation, the county and the municipalities have adopted the following dispute resolution process.

- 1. **Notice of Proposed Annexation and Proposed Land Use Classification.****
- A.** When a municipality initiates a legislative annexation or accepts a Petition for Annexation under any statutory method, it will notify the Oglethorpe County Board of Commissioners in writing of the proposed annexation in the manner required by law pursuant to *O.C.G.A. § 36-36-1 et seq.* And will include in the notification any proposed rezoning of the annexed property. Any dispute regarding the annexation itself will be controlled by *O.C.G.A. § 36-36-1 et seq.*
- B.** When a rezoning application is filed by any property owner or any other person who is permitted by law to apply for a rezoning or when a rezoning is proposed by the municipality for property that has been annexed within twelve (12) months of the effective date of an annexation of the property, the municipality shall provide the county written notice of the proposed rezoning by certified mail, return receipt requested, within five (5) days of the filing of the application of rezoning or notice of a proposed rezoning by the municipality.
- C.** The Oglethorpe County Board of Commissioners shall have forty-five (45) days from receipt of the written notice of the proposed rezoning to serve the municipality with its written objection to the proposed rezoning of the property, by certified mail, return receipt requested. The county shall include in the notification the names of its representatives for a committee to meet informally to resolve the dispute. If the county does not serve the municipality with its objection to the proposed rezoning within forty-five (45) day response period, the county shall no longer have a right to object to the proposed rezoning. The forty-five (45) day response period is designed to allow the county a sufficient period to refer the matter to the Oglethorpe County Planning Commission, in an effort to resolve the dispute expeditiously.

2. Informal Negotiation.

- A.** In the event the Oglethorpe County Planning Commission is not successful in resolving the dispute or at any time in this process, the city council of the municipality and Board of Commissioners of Oglethorpe County may appoint a committee to meet to discuss the proposed rezoning informally. Upon receipt of the notification of the county's objection to the rezoning and selection of its representatives, the City Council of the municipality shall have five (5) days to notify the county of its representatives. The municipality and the county may each appoint no more than three representatives to the committee to meet to discuss the issues raised by the county in an effort to reach a solution that is advantageous to both parties. The informal committee meeting shall be scheduled within ten (10) days of the appointment of the committee representatives.
- B.** The committee may, by mutual agreement, invite the Northeast Georgia Regional Development Center to assist as a facilitator in the discussions.
- C.** The committee may, by mutual agreement, invite other interested parties, such as the affected property owners, to participate in the discussions.
- D.** If the committee representatives reach a potential resolution of the dispute, the representatives shall make recommendations to their respective governing bodies that the proposed resolution be accepted and officially adopted. If either of the governing bodies reject the proposed resolution, they shall notify their committee representative to request they begin the formal mediation process.
- E.** If the committee representatives determine that they will be unable to reach a potential resolution of the dispute, the representatives shall report that fact to their respective governing bodies and request that they begin the formal mediation process.

3. Formal Mediation.

- A.** Within five (5) days of receipt of the report by the committee that a resolution of the dispute was not reached, a representative of the municipality and the county shall contact the Northeast Georgia Regional Development Center for assistance in scheduling a formal mediation.
- B.** The Northeast Georgia Regional Development Center shall assist the municipality and the county in the selection of a mediator acceptable to both parties.
- C.** The cost for the mediation will be borne by each of the parties proportionately to their populations in the most recent decennial census.
- D.** The mediation should be scheduled as expeditiously as possible but no later than thirty (30) days from the issuance of the committee report to the municipality and the county or the rejection of the proposed resolution submitted by the committee by one or both of the governing authorities.
- E.** The City Council and the Board of County Commissioners shall appoint no more than three representatives to participate in the mediation.
- F.** The municipality and the county may, by mutual agreement, invite other interested parties, such as the affected property owners, to participate in the mediation discussions, but only the representatives have a vote.
- G.** If the representative cannot reach a proposed agreement, the mediator will make a report to each of the governing bodies.

Section 39-106 Subdivision Regulations

The Subdivision Regulations of Oglethorpe County, Georgia, revised July 11, 2005 and as may be amended, are incorporated by reference as if fully set out herein and shall be applicable within the city limits of Lexington.

CHAPTER 40: HISTORIC PRESERVATION COMMISSION ORDINANCE

Section

40-101	Purpose
40-102	Creation of Historic Preservation Commission
40-103	Designation of Historic Districts and Landmarks
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An ordinance to establish a Historic Preservation Commission in the City of Lexington to provide for designation of historic properties or historic districts, to provide for issuance of certificates of appropriateness, to provide for an appeals procedure, to repeal conflicting ordinances, and for other purposes.

Be it ordained by the Mayor and Council of the City of Lexington.

Section 40-101 Purpose

In support and furtherance of its findings and determination that the historical, cultural, and aesthetic heritage of the City of Lexington is among its most valued and important assets that the preservation of this heritage is essential to the promotion of the health, prosperity, and general welfare of the people;

In order to stimulate revitalization of the business districts and historic neighborhoods and to protect and enhance local historical and aesthetic attractions to tourist and thereby promote and stimulate business;

In order to enhance the opportunities for federal tax relief of property owners under relevant provisions of the Economic Recovery Tax Act of 1981 allowing tax investment credits for rehabilitation of certified historic structures (26 U.S. C.A., Section 191);

The Mayor and Council of the City of Lexington hereby declare it to be the purpose and intent of this Ordinance to establish a uniform procedure for its use in providing for the protection enhancement, perpetuation for use of places, districts, sites buildings, structures and works of art having a special historical, cultural, or aesthetic interest of value, in accordance with the provisions of the Ordinance.

Section 40-102 Creation of Historic Preservation Commission

- 1. Creation of the Commission.** The title of the Commission shall be the Lexington Historic Preservation Commission. Commission members shall be appointed by Lexington City officials and will have only advisory authority in recommending landmark and historic district designation.
- 2. Commission Position within the Lexington Government.** "The Lexington Historic Preservation Commission" shall be considered a part of the planning functions of the City of Lexington.
- 3. Commission Members: Number, Appointment Terms, and Compensation.** The Historic Preservation Commission shall consist of not less than three, nor more than five members appointed by the Mayor and ratified by the City Council, who shall be residents of the City of Lexington who have demonstrated special interest, experience, or education in history, architecture, or the preservation of historic resources. Members shall serve three-year terms. In order to achieve staggered terms, initial appointments shall be one (1) member for one year, one member for two (2) years; and one (1) member for three (3) years. Members do not receive a salary, although they may be reimbursed for **expenses**. *(As amended by Lexington City Council, January 1990)*

4. **Statement of the Commissioner's Powers.** The Lexington Historic Preservation Commission shall be authorized to:
 - A. Prepare an inventory of all property within its respective historic preservation jurisdiction having the potential for designation as historic property;
 - B. Recommend to the City Council specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts;
 - C. Review applications for Certificates of Appropriateness and grant or deny same in accordance with the provisions of this Ordinance;
 - D. Recommended to the City Council that the designation of any place, district, site, building, structure, or work of art as a historic property or as an historic district be revoked or removed;
 - E. Restore or preserve any historic properties acquired by the City;
 - F. Promote the acquisition by the City of facade easements in accordance with the provisions of the "Facade and Conservation Easements Act of 1976" (Georgia Code Sections 44101 through 44- 105; previously Georgia Laws 1976 p. 1181);
 - G. Conduct an educational program on historic properties located within its historic preservation jurisdiction;
 - H. Make such investigations and studies of matters relating to historic preservation as the local governing body or the Commission itself may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources;
 - I. Seek out state and federal funds for historic preservation and make recommendations to the City concerning the most appropriate uses of any funds acquired;
 - J. Submit to the Historic Preservation Section of the Department of Natural Resources a list of historic properties or historic districts designated;
 - K. Perform historic preservation activities as the official agency of the City's historic preservation program;
 - L. Employ persons, if necessary, to carry out the responsibilities of the Commission;
 - M. Receive donations, grants, funds, or gifts or historic property, and to acquire and sell historic properties. The Commission shall not obligate the City without prior consent;
 - N. Review and make comments to the State Historic Preservation Office concerning the nomination of properties within its jurisdiction to the National Register of Historic Places.
5. **Commission's Power to Adopt Rules of Procedure.** The Commission shall adopt rules for the transaction of its business and consideration of applications; shall provide for the time and place of regular meetings, and for calling of special meetings. The Commission shall have the flexibility to adopt rules of procedure without amendment to this Ordinance. A quorum shall consist of a majority of the members. The latest edition of ROBERT'S RULES OF ORDER shall determine the order of business at all meetings.
6. **Commission's Authority to Receive Funding from Various Sources.** The Commission shall have the authority to accept donations and shall insure that the funds do not displace appropriated governmental funds.
7. **Records of Commission Meetings.** A public record shall be kept of the Commission's resolutions proceedings, and actions.

Section 40-103

Designation of Historic Districts and Landmarks

1. **Preliminary Research by the Commission**
 - A. **Commission's Mandate to Conduct a Survey of Local Historic Resources:** The Commission shall have the authority to compile and collect information and conduct surveys of historic resources within the City of Lexington.
 - B. **Commission's Power to Recommend Districts and Buildings to City Council for Designation:** The Commission shall present to the City Council nominations for historic districts and local landmarks.
 - C. **Preparation of a Report on Proposed Designations:** The Commission shall prepare formal reports when nominating historic districts or local landmarks. The reports shall be used to educate the community and to provide a permanent record of the designation. The report will follow guidelines for nominating structures to the National Register of Historic Places (National Preservation Act of 1966), and shall consist of two (2) parts: a) a physical description and b) a description of historic significance. This report will be submitted to the Historic Preservation Section of the Department of Natural Resources.

2. Designation of a Historic District

- A. Criteria for Selection of Historic Districts.** A Historic District is a geographically definable area, which contains structures, sites, works of art, or a combination thereof, which:
 - 2) Have special character or special historic/aesthetic value or interest.
 - 3) Represent one or more period of styles of architecture typical of one or more eras in history of the municipality, state, county, or region.
 - 4) Cause such areas, by reason of such factors, to constitute a visibly perceptible section of the municipality or county.
- B. Boundaries of a Historic District.** Boundaries of a Historic District shall be specified on tax maps; the boundaries will be included in the separate ordinances designating local districts. Boundaries specified in legal notices shall coincide with the boundaries finally designated. Districts shall be shown on the Official Zoning Map or, in the absence of Zoning, on an official map designated as a public record.
- C. Evaluation of Properties within Historic Districts.** Individual properties within historic districts shall be classified as:
 - 1) Historic (more than 50 years old):
 - 2) NonHistoric (less than 50 years old, yet possessing architectural character):
 - 3) Intrusions (structures less than 50 years old which do not contribute to the historical character the district).

3. Designation of a Landmark

- A. Criteria for Selection of Landmarks:** An historic landmark is a structure, site work- of art r including the adjacent area necessary for the proper appreciation of use thereof, deemed worthy of preservation by reason of value to the City of Lexington State of Georgia, or local region, for one or more of the following reasons:
 - 1) It is an outstanding example of a structure representative of its era;
 - 2) It is one of the few remaining examples of past style;
 - 3) It is a place or structure associated with an event or person of historic or cultural significance to the City of Lexington, State of Georgia, or the region.
- B. Boundary Description:** Boundaries shall be clearly defined for individual properties on tax maps and located on the Official Zoning Map, or, in the absence or zoning, or an official map designated as a public record.

4. General Matters Affecting Designation of Both Historic Districts and Landmarks

- A. Application for Designation of Historic District or landmarks.**
 - 1) Historic District - A historical society, neighborhood association, or group of property owners may apply for designation.
 - 2) Landmark Structure - A historical society or property owner may apply for designation.
- B. Required Public Hearings.** The Commission and the local governing body shall hold a Public Hearing on the proposed ordinance for designation. Notice of the hearing shall be published in at least three (3) consecutive issues in the legal organ of the City of Lexington, and written notice of the hearings shall be mailed by the Commission to all owners and occupants of such properties. All such notices shall be published or mailed not less than fifteen nor more than fortyfive days prior to the date set for the Public Hearing. A letter sent via United States Mail to the last—known owner of the property shall constitute legal notification under this Ordinance.
- C. Notification of Property Owners of Proposed Designation.** Any ordinance designating any property or district as Historic shall describe each property to be designated, set for the name(s) or the owner(s) of the designated property or properties, and require that a Certificate of Appropriateness be obtained from the Historic Preservation Commission prior to any material change in appearance of the designated property.
- D. Requirements Regarding District Boundaries.** Any Ordinance designating any property or district as Historic shall require that the designated property or district be shown on the Official Zoning Map, or other designated map in the absence of zoning in the City of Lexington and kept as a public record to provide notice of such designation.

- E. **Notification of Historic Preservation Section.** Prior to designation of any property or district as Historic, the Commission must submit a report on the historic, cultural, architectural, or aesthetic significance of each place, district site, building/ structure, or work of art, to the Historic Preservation Section of the Department of Natural Resources; thirty (30) days will be allowed to prepare written comments. *(Note, at the onset of 2021, the Historic Preservation Division was moved from the Department of Natural Resources to the Department of Community Affairs).*
- F. **Ordinance for Designation Announcement.** A decision to accept or deny the ordinance for designation shall be made within (15) fifteen days following the Public Hearing and shall be in form of a resolution to the City of Lexington.
- G. **Notification of Adoption of Ordinance for Designation.** Within thirty (30) days immediately following the adoption of the ordinance for designation, the owners and occupants of each designated historic property, and the owners and occupants of each structure, site, or work of art located within a designated historic district shall be given written notification of such designation by the City Council which notice shall apprise said owners and occupants of the necessity of obtaining a Certificate of Appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated.
- H. **Notification of Other Agencies Regarding Designation.** The Commission shall notify all necessary agencies within the City of Lexington of the ordinance for designation, including the local historical organizations.
- I. **Moratorium on Applications for Alteration or Demolition while Ordinance for Designation is Pending.** If any ordinance for the designation is being considered, the Commission shall have the power to freeze the status of the involved property.
- J. **The Authority to Amend or Rescind Designation.** The Commission has the authority to amend and/or rescind the designation if necessary.

Section 40-104

Application to Preservation Commission for Certificate of Appropriateness

- 1. **Approval of Alterations or New Construction in Historic Districts or Involving Landmarks.** After the designation by ordinance of a historic property or of an historic district, no material change in the appearance of such historic property, or of a structure, site, or work of art within such historic district, shall be made or be permitted to be made by the owner or occupant thereof, unless or until application for a Certificate of Appropriateness has been submitted to and approved by the Commission.
- 2. **Approval of New Construction within Designated Districts.** The Commission shall issue Certificates of Appropriateness to new structures constructed within designated historic districts. These structures shall conform in design, scale, building materials, setback, and landscaping to the character of the district specified in the Commissions Design Guidelines.
- 3. **Guidelines and Criteria for Certificates of Appropriateness.** When considering applications for Certificates of Appropriateness to existing buildings, the Secretary of the Interior's "Standards for Rehabilitation" shall be used as a guideline along with any other criteria adopted by the Commission.
- 4. **Application for Certificate of Appropriateness.** An application for Certificate of Appropriateness shall be accompanied by such drawings, photographs, or plans, as may be required by the Commission.
- 5. **Acceptable Commission Reaction to Application for Certificate of Appropriateness.**
 - A. The Commission shall approve the Application and issue a Certificate of Appropriateness if it finds that the proposed material change(s) in the appearance would not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In making this determination, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design arrangement, texture, and material of the architectural feature involved, and the relationship thereof to the exterior architectural style, and pertinent features of the other structures in the immediate neighborhood.
 - B. The Commission shall deny a Certificate of Appropriateness if it finds that the proposed material change(s) in appearance would have substantial adverse effects of the aesthetic, historic, or architectural significance and value of the historic property or the historic district.

6. **Public Hearings on Applications for Certificates of Appropriateness, Notices, and Rights to be Heard.** At least seven (7) days prior to review of a Certificate of Appropriateness, the Commission shall take such action as may be reasonably required to inform the owners of " any property- likely to be affected by reason of the application and shall give the applicant and such owners an opportunity to be heard. In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.
7. **Interior Alterations.** In its review of applications for Certificates, of Appropriateness, the Commission shall not consider interior arrangement or use having no effect on exterior architectural features.
8. **Technical Advice.** When dealing with difficult technical questions, the Commission shall have the power to seek expert advice.
9. **Deadline for Approval or Rejection of Application for Certificate of Appropriateness.**
 - A. The Commission shall approve or reject an application for a Certificate of Appropriateness within not more than fortyfive (45) days after the filing thereof by the owner or occupant of a historic property, or a structure, site, or work of art located within an historic district. Evidence of approval shall be by a Certificate of Appropriateness issued by the Commission.
 - B. Failure of the Commission to act within said fortyfive (45) days shall constitute approval, and no other evidence of approval shall be needed.
10. **Necessary Actions to be Taken by Commission upon Rejection of Application for Appropriateness.**
 - A. In the event the Commission rejects an application, it shall state its reasons for doing so, and shall transmit a record of such actions and reasons in writing to the applicant. The Commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she desires, may make modifications to the plans and may resubmit the application at any time after doing so.
 - B. In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of the application for a Certificate of Appropriateness by the Commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such a case, no building permit shall be issued.
3. **11. Undue Hardship.** Where, by reason of unusual circumstances, the strict application of any provision of this Ordinance would result in the exceptional practical difficulty or undue hardship upon any owner of a specific property, the Commission, in passing upon applications, shall have the power to vary or modify strict adherence to said provisions, or to interpret the meaning of said provisions, so as to relieve such difficulty or hardship; provided such variances, modifications, or interpretations shall remain in harmony with the general purpose and intent of said provisions, so that the architectural or historical integrity, or character of the property, shall be conserved and substantial justice done. In granting variances, The Commission may impose such reasonable and additional stipulations and conditions as will, in its judgment, best fulfill the purpose of this Ordinance. An undue hardship shall be a situation not of the person's making, which is: a) a problem unique to a specific property, or b) in order to comply with this Ordinance, the person will conflict with another Ordinance of the City of Lexington.
12. **Requirement of Conformance with Certificate of Appropriateness.** Work not in accordance with an issued Certificate of Appropriateness shall be halted before it is completed.
13. **Certificate of Appropriateness Void if Construction not Commenced.** A certificate of Appropriateness shall become void unless construction is commenced within six (6) months of date of issuance. Certificates of Appropriateness shall be issued for a period of eighteen (18) months and are renewable.
14. **Recording of Applications for Certificate of Appropriateness.** The Commission shall keep a public record of all applications for Certificates of Appropriateness, and of all the Commission's proceedings in connection with said application.
15. **Acquisition of Property.** The Commission may, where such action is authorized by the local governing body and is reasonably necessary or appropriate for the preservation of a unique historic property, enter into negotiations with the owner for the acquisition by gift, purchase, exchange, or otherwise, of the property or any interest therein.

16. **Appeals.** Any person adversely affected by any determination made by the Commission relative to the issuance or denial of a Certificate of Appropriateness may appeal such determination to the City Council; the appeal must be applied for within fifteen (15) days after notification is sent. The City may approve, or reject the determination made by the Commission, if the governing body finds that the Commission abused its discretion in reaching its decision. Appeals from decisions of the City made pursuant to the Georgia Historic Preservation Act may be taken to the Superior Court of the County, in the manner provided by law, for appeals from conviction for municipal or county ordinance violations.

Section 40-105 Demolition or Relocation Applications

1. **Authority to Comment on Demolition Permit Applications.** The Commission shall have the authority to comment on any request for a permit to demolish or relocate a structure within a historic district or classified as a historic landmark.
2. **Actions Acceptable in Reaction to Application for Demolition or Relocation Permit.**
 - A. The Commission shall have the authority to delay, or merely comment upon, demolition or relocation permits within its jurisdiction.
 - B. The Commission shall have the authority to deny demolition or relocation permits within its jurisdiction. *(Note, Section VB, amended by Lexington City Council, January 1990.)*
3. **Considerations of PreDemolition Plans.** A Public Hearing shall be scheduled for each application of demolition. This hearing shall be scheduled prior to the delay period specified.
4. **Consideration of PostDemolition Plans.** The Commission shall not grant demolition permission without reviewing at the same time the plans for the building that would replace the structure.
5. **Demolition or Relocation Criteria.**
 - A. Whenever a property owner shows that a building classified as Historic is incapable of earning an economic return on its value as appraised by a qualified real estate appraiser, and the Commission fails to approve the issuance of a Certificate of Appropriateness, such building may be demolished; provided, however, that before a demolition permit is issued, notice of proposed demolition shall be given as follows:
 - 1) for buildings rated Historic Six - (6) months
 - 2) for buildings rated NonHistoric Two - (2) months
 - 3) for buildings rated Intrusion - No delay
 - B. Notice shall be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice shall be published in a newspaper of general local circulation at least three times prior to the date of the permit, and the first notice of which shall be published no more than fifteen (15) days after the application for a permit to demolish is filed. The purpose of this section is to further the purposes of this Ordinance by preserving historic buildings which are important to the education, culture, traditions, and the economic values of the City, and to give the City's interested persons, historical societies, or organizations the opportunity to acquire or to arrange for the preservation of such buildings. The Commission may at any time during such stay approve a Certificate of Appropriateness, in which event a permit shall be issued without further delay.
 - C. Upon receipt of an application for a Certificate of Appropriateness for demolition or relocation, the Commission shall make a determination, supported by a written report, whether one or more of the following criteria are met:
 - 1) The structure is of such interest or quality that it would reasonably meet national, state, or local criteria for designation as an historic or architectural landmark.
 - 2) The structure is of such unusual or uncommon design texture or materials that it could not be reproduced or reproduced only with great difficulty and expense.
 - 3) Retention of the structure would aid substantially in preserving and protecting a structure which meets criterion (1) or (2) herein above.Where the Commission determines that one or more of these criteria are met, no Certificate of Appropriateness shall be issued, and the application shall be denied. *(Ordinance effective 10/1/1987 and amended 1/1990)*

Section 40-106 Maintenance of Historic Property

1. **Ordinary Repair.** Ordinary maintenance or repair of any exterior architectural feature in or on an historic property, that does not involve a material change in design, material, or outer appearance thereof, is excluded from review.
2. **Conformity to Existing Building Codes.** Nothing, in this Ordinance shall be construed as to exempt property owners from complying with existing City or County building codes, or to prevent any property owners from making any use of his property not prohibited by other statutes, ordinances, or regulations.

Section 40-107 Penalty Provisions

Violations of any provisions of this Ordinance shall be punished in the same manner as provided by charter or local law for punishment of violations of other validly enacted ordinances of the City.

Section 40-108 Severability

In the event that any section, subsection, sentence, clause, or phrase of the Ordinance shall be declared, or adjudged invalid or unconstitutional, and such adjudication shall in no manner affect the other sections, sentences, clauses, or phrases of the Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

Section 40-109 Repealer

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 40-110 Effective Date

This Ordinance shall become effective upon its approval by the Lexington City Council.

Section 40-111 Definitions

1. **Certificate of Appropriateness.** Means a document evidencing approval by the Historic Preservation Commission of an application to make a material change in the appearance of a designated historic property or of a property located within a designated historic district.
2. **Exterior Architectural Features.** Means the architectural style, general design, and general arrangement of exterior of a building or other structure, including but not limited to the kind or texture of the building material, and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details, or elements relative to the foregoing.
3. **Exterior Environmental Features.** Means all the aspects of the landscape or the development of the site which affect the historical character of the property.
4. **Historic District.** Means a geographically definable area which contains structures, sites, works of art, or a combination thereof which exhibit a special historical, architectural, or environmental character as designated by Mayor and Council.
5. **Historic Property.** Means an individual structure, site, or work of art which exhibits a special historical architectural, or environmental character as designated by the Mayor and Council.
6. **Material Change in Appearance.** Means a change that will affect either the exterior architectural or environmental features of an historic property or any structure, site, or work of art within an historic district, and may include any one or more of the following:
 - A. A reconstruction or alteration of the size, shape or facade on an historic property, including any of its architectural elements of details.
 - B. Demolition of an historic structure.
 - C. Commencement of excavation for construction purposes.
 - D. A change in the location of advertising visible from the public rightofway.
 - E. The erection, alteration, restoration, or removal of any building or other structure within an historic property or district, including walls or fences, steps and pavements, or other appurtenant features.
(Ordinance effective 10/1/1987 and amended 1/1990)

ORDINANCE

AN ORDINANCE OF THE Mayor AND CITY COUNCIL OF THE CITY OF LEXINGTON, GEORGIA ADOPTING A CODE OF THE ORDINANCES FOR THE CITY ENTITLED "THE CODE OF THE CITY OF LEXINGTON PROVIDING FOR THE REPEAL OF ORDINANCES NOT INCLUDED THEREIN AND FOR OTHER PURPOSES:

Be it ordained by the Mayor and City Council of the City of Lexington, Georgia, and it is hereby ordained by the authority of the same as follows:

Section 1: There is hereby adopted by the City Council a code entitled, "The Code of the City of Lexington, Georgia" containing" certain ordinances of a general and permanent nature as compiled, consolidated, codified and indexed, of which code not less than two (2) copies have been and are now filed in the Office of the City Clerk, authenticated by the signatures of the Mayor, City Clerk and City Attorney, and signed by the members of the City Council of the City of Lexington, said code being hereto attached and made a part hereof.

Section 2: The provisions of this Code shall be in force and effect on _____, 2012 and all ordinances of a general and permanent nature in force on such date and not contained in the Code are repealed by this ordinance from and after such date, except as may be provided hereinafter.

Section 3: The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or occurring before _____, 2012; nor shall such repeal affect any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issue of any bonds, including revenue certificates, of the City of Lexington or any evidence of the city's indebtedness or any contract or obligation assumed by the city; nor shall such repeal affect the administrative ordinances or resolutions of the City Council not in conflict or inconsistent with the provisions of the Code; nor shall it affect any right or franchise conferred by any ordinance or resolution of the city or any person or corporation; nor shall it affect any prosecution, suit, or other proceeding pending or any judgment rendered on or prior to _____, 2012.

Section 4: It is hereby declared to be the intention of the Mayor and City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance and the Code hereby adopted are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance or of the Code hereby adopted shall be declared unconstitutional or otherwise invalid by Valid Judgment or Decree of a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance or of the Code hereby adopted.

Read and adopted in the regular meeting of the City Council held on this ____ day of _____, 2012.

ATTEST:

City Clerk

Mayor

City Attorney

Council Member

Council Member

Council Member

Council Member

Council Member

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