

CHARTER COMPARATIVE TABLE

ORDINANCES

The Comparative Table shall be updated and included at a later date.

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. Designation and citation of Code.

The provisions embraced in the following chapters and sections shall constitute and be designated "The Code of the Town of Carl, Georgia," and may be so cited. Such Code may also be cited as the "Town of Carl Code."

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §1-101 et. seq.)

Note — Ord. No. 11-16-2023 shall be effective upon successful compliance with the requirements of O.C.G.A. § 36-35-3(b)(1).

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Page 25 of 596State law reference(s)—Codification requirements, O.C.G.A. § 36-80-19.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Town council, or the content clearly requires otherwise.

Bond. When a bond is required by law, an undertaking in writing, without seal, is sufficient; and in all bonds where the names of the obligors do not appear in the bond but are subscribed thereto, they are bound thereby pursuant to O.C.G.A. § 1-3-1(d)(1).

Town. The term "the Town" or "this Town" means the Town of Carl, Georgia.

Code. The term "Code" shall mean "The Code of the Town of Carl, Georgia."

Computation of time. When a number of days is prescribed for the exercise of any privilege, or the discharge of any duty, only the last day shall be counted; and if the last day shall fall on Saturday or Sunday, the party having that privilege or duty, shall have through the following Monday to exercise that privilege or to discharge such duty. When the last day prescribed for such action falls on a public and legal holiday pursuant to O.C.G.A. § 1-4-1, the party having the privilege or duty shall have through the next business day to exercise the privilege or to discharge the duty. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation pursuant to O.C.G.A. § 1-3-1(d)(3).

Council. The term "council" or "Town council" means the council of the Town of Carl, Georgia.

County. The term "the county" or "this county" means the County of Barrow, State of Georgia.

Day. The term "day" means a calendar day of 24 hours.

Delegation of authority. The term "delegation of authority" means a provision that authorizes or requires a Town officer or Town employee to perform an act or make a decision that authorizes such officer or employee to act or make a decision through subordinates.

Gender. The masculine gender includes the feminine and the neuter pursuant to O.C.G.A. § 1-3-1(d)(4).

Governing body or governing authority. The term "governing body" or "governing authority" means the Town council of the Town of Carl, Georgia.

Interpretation. In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Where any provision of this Code imposes greater restrictions upon the subject matter than the general provision imposed by this Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Joint authority. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared by ordinance or statute pursuant to O.C.G.A. § 1-3-1(d)(5).

Keeper or proprietor. The term "keeper" or "proprietor" means persons, firms, associations, corporations, clubs and co-partnerships, whether acting by themselves or as a servant, agent or employee.

Limits or corporation. The term "limits" or "corporation" means the corporate limits (legal boundary) of the Town of Carl, Georgia.

Mayor. The term "mayor" means the mayor of the Town of Carl, Georgia.

Month. The term "month" means a calendar month pursuant to O.C.G.A. § 1-3-3(11).

Municipality. The term "municipality," as it appears in this Code, means the Town of Carl, Georgia.

Name of officer. Whenever the name of an officer is given, it is construed as though the words "of the Town of Carl" were added.

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Nontechnical and technical terms. A term or phrase shall be construed according to the common and approved usage of the language; but technical terms or phrases and any others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to that meaning.

Number. The singular or plural number each includes the other pursuant to O.C.G.A. § 1-3-1(d)(6), unless the other is expressly excluded.

Oath. The term "oath" includes affirmation pursuant to O.C.G.A. § 1-3-3(12). When an oath is required or authorized by law, an affirmation in lieu thereof may be taken. An affirmation has the same force and effect as an oath.

O.C.G.A. The abbreviation "O.C.G.A." means the Official Code of Georgia Annotated.

Ordinances. The term "ordinances" means ordinances of the Town of Carl, Georgia and all amendments thereto.

Owner. The term "owner," as applied to a building or land, means any part owner, joint owner, tenant in

common, tenant in partnership or joint tenant of the whole or of a part of such building or land.

Penal ordinances. The term "penal ordinances" means the rules of construction and definitions of words as contained in the penal code of the state. Insofar as they can be made applicable, these rules of construction are hereby adopted as governing the penal ordinances of the Town.

Person. The term "person" means corporations as well as individuals pursuant to O.C.G.A. § 1-3-3(14).

Personal property. The term "personal property" means every species of property except real property, as herein defined.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively, pursuant to O.C.G.A. § 1-3-3(8), (15).

Property. The term "property" means real, personal, and mixed estates and interests.

Public place. The term "public place" means any park, schoolyard or adjacent open space, or any area available and/or accessible to the public, regardless of public or private ownership.

Real property. The term "real property" means lands, tenements, and hereditaments.

Residence. The term "residence" means the place adopted by a person as his or her place of habitation, and to which, whenever he or she is absent, he or she has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps is his or her residence.

Seal. The term "seal" includes impressions on the paper itself, as well as impressions on wax or wafers. With the exception of official seals, a scrawl or any other mark intended as a seal shall be held as such pursuant to O.C.G.A. § 1-3-3(17).

Shall/may. The term "shall" is mandatory and the term "may" is permissive.

Sidewalk. The term "sidewalk" means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription. The term "signature" or "subscription" means a mark when the person cannot write.

State. The term "the state" or "this state" means the State of Georgia.

Street. The term "street" means streets, avenues, boulevards, roads, public alleys, lanes, viaducts, and all other public highways in the Town.

Tenant or occupant. The term "tenant" or "occupant," as applied to a building or land, means any person holding a written or oral lease of, or who occupies the whole or a part of, that building or land, either alone or with others.

Tense. The present or past tense includes the future tense pursuant to O.C.G.A. § 1-3-1(d)(7).

Week. The term "week" means seven days.

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Page 27 of 596 *Written, in writing.* The term "written" or "in writing" includes any representation of words, letters, numbers, or figures, whether by printing or otherwise pursuant to O.C.G.A. § 1-3-3(23).

Year. The term "year" means a calendar year pursuant to O.C.G.A. § 1-3-3(24).

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §1-101, et. seq.)

State law reference(s) – Similar provisions, O.C.G.A. § 1-3-2.

Sec. 1-3. Catchlines of sections; history notes, reference notes and editor's notes.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of those sections nor as any part of the section nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. The history notes appearing in parentheses after each section and the references and editor's notes scattered throughout the Code are for the benefit of the user of the Code and shall have no legal effect.

(Ord. No. 01-16-2023, The Code of the Town of Carl, Georgia 1991, §1-101, et. seq.)

State law reference(s)—Descriptive headings, citations, and notes, etc., not part of law, O.C.G.A. § 1-1-7.

Sec. 1-4. Severability of parts of Code.

It is hereby declared to be the intention of the Town council that 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 by the valid judgment or decree of any court of competent jurisdiction, that unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the Town council without the incorporation of this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

State law reference(s)—Invalid or unconstitutional provisions, O.C.G.A. § 1-1-3.

Sec. 1-5. Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed or cause of action arising under the ordinance repealed.

Sec. 1-6. Ordinances not affected by Code.

(a) 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 Town or authorizing the issuance of any bonds of the Town or any evidence of the Town's indebtedness.
- (3) Any contract or obligation assumed by the Town.
- (4) Any ordinance fixing the salary of any Town officer or employee.
- (5) Any right or franchise granted by the Town.
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc.,

any street or public way in the Town.

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Page 28 of 596(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 or providing for subdivision regulations.

(12) Any ordinance describing or altering the boundaries of the Town or annexing property to the Town.

(13) Any ordinance levying or imposing taxes not included in this Code.

(14) The administrative ordinances or resolutions of the Town not in conflict or inconsistent with the provisions of this Code.

(15) Any ordinance establishing and prescribing employment and personnel policies and procedures.

(16) Any ordinance of agreement with another political subdivision.

(17) Any ordinance establishing and prescribing the street grades of any street in the Town.

(18) Any other ordinance, or part thereof, which is not of a general and permanent nature; or which is referred to elsewhere in this Code as continuing in effect.

(b) 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. 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.

Sec. 1-7. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the Town. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, non-substantive changes in ordinances or resolutions and parts of ordinances or resolutions included in the supplemental, insofar as it is necessary to do so to embody them into a unified Code. For example, the person may:

(1) (2) (3) (4) (5) Organize the ordinance material into appropriate subdivisions.

Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code

printed in the supplement and make changes in such catchlines, headings and titles.

Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing sections or other subdivision numbers.

Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections ____ to ____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated into the Code).

Make other non-substantive changes necessary to preserve the original meaning of ordinances inserted into the Code.

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Page 29 of 596(d) In no case shall the person make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-8. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, insofar as they are the same as those of ordinances and resolutions existing at the time of adoption of this Code and included in this Code, shall be considered as continuations thereof and not as new enactments.

Sec. 1-9. General penalty; continuing violations.

(a) Whenever in this Code or in any ordinance of the Town any act is prohibited or is made or declared to be unlawful or any offense, or whenever in this Code or in any ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of that provision of this Code or that ordinance shall be punished by a fine not to exceed \$1,000.00 or imprisonment for six months or both such fine and imprisonment. The municipal court may fix punishment by fine, imprisonment or alternative sentencing, as now or hereafter provided by law and may impose any punishment up to the maximums specified by general law for offenses with its concurrent jurisdiction, subject to all limitations contained in the Charter of the Town. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

(b) 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 Town's Charter or Code.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §1-101, et. seq.)

Note — Ord. No. 11-16-2023 shall be effective upon successful compliance with the requirements of O.C.G.A. § 36-35-3(b)(1).

State law reference(s)—General penalties and limitations on penalties, O.C.G.A. § 36-35-6(a).

Sec. 1-10. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. Chapters,

sections and subsections or any part thereof, repealed by subsequent ordinances, 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 these subsequent ordinances until such time that the Code and subsequent ordinances numbered or omitted are readopted as a new Code by the Town council.

(b) Amendments to any of the provisions of this Code may be made by amending those provisions by specific reference to the section number of this Code in the following language: "Section ____ of the Code of the Town of Carl, Georgia, is hereby amended to read as follows:...." The new provisions may then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "The Code of the Town of Carl, Georgia, is hereby amended by adding a section (or chapter, article, division or subdivision, as appropriate) to be numbered ____, that reads as follows:...." The new material may then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed shall be specifically repealed by section, article or chapter number of this Code.

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Page 30 of 596(e) When necessary, sections and subsections to the Code may be renumbered by the official codifier for the Town to fulfill the intent of the governing body but all such changes shall be approved in advance by the Town attorney.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §1-101 et. seq.)

Note — Ord. No. 11-16-2023 shall be effective upon successful compliance with the requirements of O.C.G.A. § 36-35-3(b)(1).

Sec. 1-11. Altering Code.

It shall be unlawful for any person in the Town 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 this Code in any manner except by ordinance or other official act of the Town council which will cause the law of the Town to be misrepresented thereby. Any person violating this section shall be punished according to the general penalties described in section 1-9.

Chapter 2 ADMINISTRATION₂

ARTICLE I. IN GENERAL

Secs. 2-1—2-39. Reserved.

ARTICLE II. TOWN COUNCIL

DIVISION 1. GENERALLY

Sec. 2-40. Definitions.

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

Town officials or official, unless otherwise expressly defined, means the mayor, members of Town council, municipal court judges (including substitute judges), Town managers, assistant Town managers, Town clerks, deputy Town clerks, whether such person is salaried, hired or elected, and all other persons holding positions designated by the Town Charter, as it may be amended from time to time. The term "Town official," unless otherwise expressly defined, includes individuals appointed by the mayor and Town council to all Town commissions, committees, boards, task forces or other Town bodies unless specifically exempted from this section by the Town council.

Decision means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the Town council or other Town board or commission, as well as the discussions or deliberations of the council, board or commission, which can or may lead to a vote or formal action by that body.

Discretionary authority means the power to exercise any judgment in a decision or action.

State law reference(s)—Home rule for municipalities, Ga. Const. art. IX, § II, ¶ II; supplemental powers of municipalities and counties enumerated, Ga. Const. art. IX, § II, ¶ III; municipal powers, O.C.G.A. § 36-34-2; the Municipal Home Rule Act of 1965, O.C.G.A. § 36-35-1 et seq.

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Entity means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Immediate family means spouse, mother, father, brother, sister, son or daughter of any Town official.

Incidental interest means an interest in a person, entity or property which is not a substantial interest and which has insignificant value.

Remote interest means an interest of a person or entity, including a Town official, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general Town fees, Town utility charges or a comprehensive zoning ordinance or similar decision is incidental to the extent that the councilmember would be affected in common with the general public.

Substantial interest means a known interest, either directly or through a member of the immediate family, in another person or entity when:

- (1) The interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity;
- (2) Funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000.00 in salary, bonuses, commissions or professional fees or \$5,000.00 in payment for goods, products or nonprofessional services, or ten percent of the recipient's gross income during that period, whichever is less;

(3) (4) The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the Town council; or

The person is a creditor, debtor or guarantor of the other person or entity in an amount of \$5,000.00 or more.

(5) (6) The direct or indirect ownership of more than 25 percent of the assets or stock of any business as defined by O.C.G.A. § 45-10-20(11).

An interest in real property is an equitable or legal ownership with a market value of \$5,000.00 or more.

Sec. 2-41. Penalty.

Any persons violating any provisions of this policy are subject to:

(1) Written and oral reprimand by the council, board, commission or committee of which said violator is a member;

(2) Punishment according to the general penalties described in section 1-9;

(3) Request for resignation by the council, board, committee or commission of which the violator is a member.

Each council, board, commission or committee shall have authority to establish rules and regulations to impose said penalties.

Sec. 2-42. Compensation.

(a) (b) (c) The amount of compensation for each councilmember shall be set annually through the approved budget process, for services rendered on behalf of the Town.

The amount of compensation for the mayor shall be set annually through the approved budget process, for services rendered on behalf of the Town.

Reimbursement for expenses incurred by said elected officials in the discharge of their duties shall be set according to Internal Revenue Service regulations regarding vehicle mileage and other expenses approved by the council through the Town budget process and policies established in the Town finance department.

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Page 32 of 596 State law reference(s)—Salary for municipal employees, how fixed, O.C.G.A. § 36-35-4.

Sec. 2-43. Standing committees.

All standing committees shall be appointed by a majority vote of the council.

Sec. 2-44. Code of ethics for Town officials.

(a) The public judges its government by the way public officials and employees conduct themselves in the post to which they are elected or appointed.

(b) All government, of right, originates with the people; is founded upon their will only; and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them pursuant to Ga. Const. art. 1, § 2, ¶ 1.

(c) The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it pursuant to Ga. Const. art. 1, § 2, ¶ 2.

(d) The people have a right to expect that every public official will conduct himself or herself in a manner that will tend to preserve public confidence in and respect for the government he or she represents.

(e) Such confidence and respect can best be promoted if every public official, whether paid or unpaid, and whether elected or appointed, will uniformly:

(1) Treat all citizens with courtesy, impartiality, fairness and equality under the law; and

(2) Avoid conflicts between their private self-interest and the public interest.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-102)

State law reference(s)—Code of ethics as it pertains to state public officials, O.C.G.A. § 45-10-1 et seq.

Sec. 2-45. Declaration of policy.

(a) It is the policy of the Town that the proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; those governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all Town officials is adopted.

(b) This code of ethics has the following purposes:

(1) To encourage high ethical standards in official conduct by Town officials;

(2) To establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interest of the Town;

(3) To require disclosure by such officials of private financial or other interest in manners that affect the Town; and

(4) To serve as a basis for disciplining those who refuse to abide by its terms.

(c) The provisions of this section shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns or the conduct of candidates in such campaigns.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-102)

State law reference(s)—Conflicts of interest, policy and purpose as it pertains to state officials, O.C.G.A. § 45-10-21.

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Page 33 of 596 Sec. 2-46. Scope of persons covered.

The provisions of this code of ethics shall be applicable to all members of the Town council, all advisory commissions and committee members, all commissions, committees, authorities, and other groups appointed by the council or the mayor.

Sec. 2-47. Conflict of interest.

(a) No councilmember or member of any board or commission shall use such position to secure special privileges or exemptions for such person or others, or to secure confidential information for any purpose other than official responsibilities.

(b) No councilmember or member of a board or commission, in any matter before the council, board or commission in which he or she has a substantial interest, shall fail to disclose for the common good for the record such interest prior to any discussion or vote.

(c) No councilmember or member of a board or commission shall act as an agent or attorney for another in any matter before the Town council or any board or commission.

(d) No councilmember or commissioner shall directly or indirectly receive, or agree to receive, any compensation, gift, reward or gratuity in any matter or proceeding connected with, or related to, the duties of his or her office except as may be provided by law.

(e) No councilmember or member of any board or commission shall enter into any contract with the Town except as specifically authorized by state statutes. Any councilmember or member of a board or commission who has a proprietary interest in an agency doing business with the Town shall make known that interest in writing to the Town council and the Town clerk.

(f) All public funds shall be used for the general welfare of the people and not for personal economic gain.

(g) Public property shall be disposed of in accordance with state law pursuant to O.C.G.A. § 36-37-6.

(h) No Town official shall solicit or accept other employment to be performed or compensation to be received while still a Town official or employee, if the employment or compensation could impair judgment or performance of Town duties.

(i) If a Town official accepts or is soliciting a promise of future employment from any person or entity who has substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the board or commission on which he or she serves or to his or her supervisor and shall take no further action on matters regarding the potential future employer.

(j) No Town official shall use Town facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.

(k) No Town official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-102-103)

State law reference(s)—Code of ethics as it pertains to state officials, O.C.G.A. § 45-10-3.

Sec. 2-48. Prohibition of conflict of interest.

A Town official may not participate in a vote or decision on a matter affecting a person, entity or property in which the official or employee has a personal interest; in addition, a Town official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision

regarding funding by or through the Town of the entity.

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Page 34 of 596(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-102)

State law reference(s)—Voting prohibited when personally interested, O.C.G.A. § 36-30-6; conflicts in zoning actions, O.C.G.A. § 36-67A-1 et seq., conflicts of interest as it pertains to state public officials, O.C.G.A. § 45-10-22.

Sec. 2-49. Exemptions.

This code of ethics shall not be construed to require the filing of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil or political organization, or any similar organization not conducted as a business enterprise or governmental agency, and which is not engaged in the ownership or conduct of a business enterprise or government agency.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-101 et. seq.)

Secs. 2-50—2-71. Reserved.

DIVISION 2. MEETINGS

Sec. 2-72. Regular meetings.

Regular meetings of the Town council are held at the Town hall or at such other place as may be designated, on the third Thursday of each month at 6:00 p.m. To the extent not prohibited by law, such meetings may be held in person or virtually.

Sec. 2-73. Order of business.

(a) The order of business for council meetings shall be as follows:

- (1) Call to order (Town Clerk);
- (2) Pledge of Allegiance;
- (3) Welcome guest;
- (4) Announcements;
- (5) Public comment;
- (6) Presentation of minutes of last meeting;
- (7) Corrections or additions, if any, to be made in same;
- (8) Amendments to unfinished and/or new business;
- (9) Reading by the clerk of any communications;
- (10) Reports of departments;
- (11) Public comment;
- (12) Unfinished business;
- (13) Public comment;

State law reference(s)—Open and public meetings, O.C.G.A. § 50-14-1 et seq.

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Page 35 of 596(b) (c) (14) New business;

(15) Public comment.

If the Town council directs any matter to be the special business of a future meeting, that matter shall have precedence over all other business at that future meeting.

No proposition shall be entertained by the Town council until it has been seconded, and every proposition shall, when required by the mayor or any member, be reduced to writing.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-204-206)

Sec. 2-74. Rules of procedure.

Except as otherwise provided by ordinance, the procedures of the Town council shall be governed by the most current edition of Robert's Rules of Order.

Sec. 2-75. Previous questions.

The previous question may be called at any time by a majority of the members present. The ayes and nays may be called for by any member.

Sec. 2-76. Motions having precedence.

(a) When a question is under consideration no motion shall be received except as follows:

- (1) To lay on the table;
- (2) To postpone to a time certain;
- (3) To postpone indefinitely;
- (4) To refer to a committee;
- (5) To amend;
- (6) To strike out or insert; or
- (7) To divide.

(b) Motions for any of these purposes shall have precedence in the order named.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3)

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-204-206)

Sec. 2-77. Motion to adjourn.

A motion to adjourn shall always be in order and shall be decided without debate.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-204-206)

Secs. 2-78—2-97. Reserved.

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Chapter 2 - ADMINISTRATION

ARTICLE III. ELECTIONS

ARTICLE III. ELECTIONS

Sec. 2-98. Election officials.

The Town council shall by resolution annually appoint a municipal election superintendent, election managers, absentee ballot clerk and any other officials as are necessary, all of whom shall exercise those powers and duties set forth in the Georgia Election Code pursuant to O.C.G.A. § 21-2-1 et seq., as now or hereafter amended. In the event that a municipality fails to make an appointment, the Town clerk shall serve as the municipal superintendent.

(Ord. No. 11-15-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2, Res. 09-02, 2009)

State law reference(s)—Powers and duties of superintendents, O.C.G.A. §§ 21-2-70, 21-2-70.1.

Sec. 2-99. Notice of candidacy, filing dates.

In the case of a general election, the municipal qualifying period shall commence no earlier than 8:30 a.m. on the last Monday in August immediately preceding the general election and shall end no later than 4:30 p.m. on the following Friday. In the case of a special election, the municipal qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2)

State law reference(s)—Filing notice of candidacy, O.C.G.A. § 21-2-132(d)(3).

Sec. 2-100. Qualification fees.

The qualifying fees are to be set and published by the governing body not later than February 1 of any year in which a general primary, nonpartisan election or general election is to be held, and at least 35 days prior to the special primary or election, pursuant to O.C.G.A. § 21-2-131 et seq. Such fees, if any, shall be paid to the municipal superintendent at the time a candidate files his or her notice of candidacy.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2)

Sec. 2-101. Polling place.

The polling place shall be as fixed from time to time by resolution of the Town council and approved by the department of justice.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2)

State law reference(s)—Polling places, O.C.G.A. § 21-2-265.

⁴State law reference(s)—Georgia election code, O.C.G.A. § 21-2-1 et seq.; election where all municipal seats are vacant, O.C.G.A. § 36-30-10; reapportionment of election districts, O.C.G.A. § 36-35-4.1; procedure where actions or local Acts are required to be submitted to Department of Justice, O.C.G.A. § 36-60-11.

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Sec. 2-102. Election by plurality.

The person receiving a plurality of the votes cast for any Town office shall be elected.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2)

Sec. 2-103. Barrow County hired to conduct elections.

Pursuant to Res. No. 2-409, the Town has contracted with the Barrow County Election Superintendent to carry out Town elections.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 2)

Secs. 2-104—2-132. Reserved.

ARTICLE IV. MUNICIPAL COURTS;

Sec. 2-133. Sessions.

The municipal court of the Town shall be held at the Town hall or a place designated by the court.

Arraignments will be held as scheduled by the municipal court following the date the charge of violation of ordinance is made. Any trial necessary will be scheduled by the municipal court. The judge of the court shall exercise full judicial power as to the change of time or location of trial.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 5)

Sec. 2-134. Imposition of costs.

The judge shall have the power to assess each person convicted a court cost and the cost of transportation to and from jail, and other actual costs involved in the incarceration of the convicted person. The judge shall assess costs to each person that fails to appear in court. Cases that result in a warrant will be assessed a "warrant fee." The judge shall have the power to impose punishment according to the general penalties described in section 1-9. All fees and costs shall be as provided by law.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 5)

State law reference(s)—Sentences by municipal courts, O.C.G.A. § 36-32-5; general penalties, O.C.G.A. § 36-35-6(a).

Sec. 2-135. Disposition of fines and costs.

All funds from court costs and fines of all cases in the municipal court of the Town shall go into the general fund of the Town, except for fines and surcharges required by agreement or law to be submitted to the state or the county.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 5)

Sec. 2-136. Costs assessed for peace officers' annuity and benefit fund.

All fines in the municipal court shall be increased from time to time by the Town council. Funds shall be forwarded to the proper authorities as provided by O.C.G.A. § 47-17-60.

State law reference(s)—Establishment and authorization of municipal courts, Ga. Const. art. VI, § 1, ¶ 1; municipal courts, O.C.G.A. § 36-32-1 et seq.

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Page 38 of 596(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 5)

Sec. 2-137. Police officers' attendance.

In the appointment of police officers to serve in the municipal court, all applications or applicants shall be recommended by the chief of police and police department and approved by the mayor. Such appointments shall be limited to not less than one day nor for more than one year, the expiration date of which is to be specified in the appointment or oath of office signed by police officer when sworn in by the mayor; and shall be revocable by the mayor at any time during that period. All such persons so appointed and sworn in shall be designated "police officers."

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 5)

Secs. 2-138—2-157. Reserved.

ARTICLE V. OFFICERS, EMPLOYEES AND BENEFITS

DIVISION 1. GENERALLY

Secs. 2-158—2-182. Reserved.

DIVISION 2. OFFICERS AND EMPLOYEES

Sec. 2-183. Town clerk; duties.

In addition to the duties of the Town clerk under the Town Charter, the Town clerk shall perform the following duties:

- (1) Be the custodian of the Town seal and affix its impression on documents whenever required;
- (2) Preserve the codes, records and documents belonging to the Town and maintain a proper index to all records and documents;
- (3) Receive all money due the Town, including taxes, licenses and fees, and pay out the same only upon orders of the Town council; and
- (4) Perform any other duties as may be required by the Town council.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 3)

Sec. 2-184. Town attorney; duties.

The Town attorney shall be the legal advisor and representative of the Town and in that capacity shall:

- (1) Prepare ordinances when so requested by the Town council;

«State law reference(s)—Municipal authority over offices and employments, O.C.G.A. § 36-34-2; fair employment practices of state employers, O.C.G.A. § 45-19-20 et seq.; Employees' Retirement System of Georgia, O.C.G.A. § 47-2-1 et seq.; and Georgia Firemen's Pension Fund, O.C.G.A. § 47-7-1 et seq.; Georgia Municipal Employees Benefit System, O.C.G.A. § 47-5-1 et seq.; Georgia Records Act, O.C.G.A. § 50-18-90 et seq.

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Page 39 of 596(2) (3) Prepare for execution all contracts and instruments to which the Town is a party when so requested and approve, as to form, all ordinances, bonds and Town contracts; and

Render any other legal services as may be required by the Town council.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-501)

Sec. 2-185. Departments established.

(a) (b) (c) The following departments of the Town are hereby established:

- (1) Administration;
- (2) Finance;
- (3) Municipal court records;
- (4) Parks;
- (5) Public buildings; and
- (6) Streets, bridges and drainage.

All departments shall be under the administrative direction of the mayor. The mayor shall be assisted by a director of administration, who shall supervise the operation of the administration, finance, parks, public works, and municipal court records departments, and by a chief of police, who shall supervise the operation of the police department.

The duties of the various committees shall be as specified from time to time by the council.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §3-502)

Secs. 2-186—2-208. Reserved.

DIVISION 3. BENEFITS

Sec. 2-209. Declaration of policy.

It is hereby declared to be the policy and purpose of the Town to extend at the earliest date possible under the agreement entered into by the state and the federal security administration, to the employees and officials thereof, and its instrumentalities, not excluded by law or by this division, the benefits of the system of old age and survivors insurance as authorized by the Federal Social Security Act, the state enabling act, and amendments thereto. In pursuance of said policy, and for that purpose, the Town shall take such action as may be required by applicable state or federal laws or regulations.

State law reference(s)—Providing benefits to municipal employees, O.C.G.A. § 36-35-4.

Sec. 2-210. Agreements; execution.

The mayor or other chief executive officers of the Town are hereby authorized and directed to execute all necessary agreements and amendments thereto with the employees' retirement system of the state (O.C.G.A. § 47-2-1 et seq.) for coverage of said employees and officials as provided for in section 2-209 hereof, to include any employees that are in positions covered by a public retirement system, in the manner by said law provided namely, firefighters whose positions are covered under the state firemen's pension fund (O.C.G.A. § 47-7-1 et seq.).

State law reference(s)—Political subdivisions may submit plan for extending benefits, and may contribute funds, O.C.G.A. § 47-18-41(a), (c).

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Withholdings from salaries or wages of employees and officials for the purpose provided for in section 2-209 hereof are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations and shall be paid over to the state agency.

Sec. 2-212. Appropriations by Town.

There shall be appropriated from Town funds such amounts at such times as may be required by applicable state or federal law or regulations for employer's contributions, administrative expenses, and a guaranty fund to ensure that the state will not incur any debt or loss as a result of the agreement referred to in section 2-210. Such funds shall be paid over to the employees' retirement system of the state (O.C.G.A. § 47-2-1 et seq.) in accordance with regulations established by said agency.

Sec. 2-213. Records and reports.

The Town shall keep such records and make such reports as may be required by applicable state or federal laws or regulations.

State law reference(s)—Local governments under the Georgia Records Act, O.C.G.A. § 50-18-99; maintenance of public records, O.C.G.A. § 45-6-1 et seq.

Sec. 2-214. Excluded employees.

There is hereby excluded from this division any authority to make any agreement with respect to any position, or any employee or official not authorized to be covered by applicable state or federal laws or regulations.

Chapter 6 ADULT ENTERTAINMENT⁷

ARTICLE I. IN GENERAL

Sec. 6-1. Purpose of article.

The purpose of this chapter is to regulate certain types of businesses including, but not limited to, adult entertainment establishments, to the end that the many types of criminal activities frequently engendered by such businesses; the adverse effect on property values and on the public health, safety and welfare of the Town; on its citizens and property; and on the character of its neighborhoods and development will be curtailed. This chapter is not intended as a de facto prohibition of legally protected forms of expression. This chapter is intended to represent a balancing of competing interests: reduced criminal activity and protection of neighborhoods and development through the regulation of adult entertainment establishments versus any legally protected rights of adult entertainment establishments and patrons. This chapter is not intended to allow or license any business establishment or activity which would otherwise be unlawful.

⁷State law reference(s)—Regulation of adult entertainment in connection with sale or consumption of alcohol, Ga. Const. art. III, § VI, ¶ VII; certain nude and sexual conduct, use of devices or objects to perform or simulate such conduct, and showing and displaying of pictures, etc., prohibited, O.C.G.A. § 3-3-41; use of premises for obscenity or related offenses constitutes nuisance, O.C.G.A. § 16-12-82; local government authorized to

restrict adult bookstores, explicit media outlets, and adult movie houses to certain areas, O.C.G.A. § 36-60-3.

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Page 41 of 596 **Sec. 6-2. Definitions.**

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

Adult bookstore means an establishment having a substantial or significant portion of its stock in trade, books, printed materials, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising at least five percent of its total floor space, devoted to the sale or consisting of printed materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult businesses means establishments other than those expressly specified in this chapter, where employees or patrons expose specified anatomical areas or engage in specified sexual activities.

Adult entertainment establishment means a business or establishment where employees or patrons expose specified anatomical areas or engage in specified sexual activities including, but not limited to: adult bookstores, adult businesses, adult motion picture theaters, adult mini-motion picture theaters, adult motion picture arcades, adult video stores, erotic entertainment/dance establishments, escort bureaus and introduction services.

Adult mini-motion picture theater means an enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture arcade means any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theater means an enclosed building with a capacity of 50 or more persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult video store means an establishment having a substantial or significant portion of its stock in trade, videotapes or movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section, comprising at least five percent of its net sales from videos which are characterized or distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Erotic entertainment/dance establishments means a nightclub, theater or other establishment which features

live performances by topless and/or bottomless dancers or entertainers, go-go dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Escort bureaus and introduction services means any business, agency or persons who, for a fee, commission, hire, reward, profit or other consideration furnishes or offers to furnish names of persons or who introduces, furnishes or arranges for persons who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

Heavy commercial zoning means districts greater than 30 contiguous acres that contain commercial establishments on more than 70 percent of the lots.

Seminude means the exposure of one or more, but not all of the following: human genitals or pubic region, buttocks or female breasts below a point immediately above the top of the areola.

Specified anatomical areas means and includes any of the following:

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Page 42 of 596(1) Less than completely and opaquely covered genitals or pubic region, buttocks or female breasts below a point immediately above the top of the areola; or

(2) Human male genitalia in a discernibly turgid state, even if completely or opaquely covered.

Specified sexual activities means and includes any of the following:

(1) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism or zoerasty.

(2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence.

(3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation.

(4) Fondling or touching of nude human genitals, pubic regions, buttocks or female breasts.

(5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain.

(6) Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being.

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

Sec. 6-3. Penalty for violation.

Any person violating any of the provisions of this chapter shall upon conviction, be punishable as provided by section 1-9. Each day of operation in violation of this article shall be deemed a separate offense.

Secs. 6-4 - 6-26. Reserved.

ARTICLE II. REGULATIONS

Sec. 6-27. Unlawful operation of establishment declared nuisance.

(a) Any adult entertainment establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The Town may, in addition, or in lieu of all other remedies, commence an action or proceeding for abatement, removal or injunction thereof in the manner provided by law.

(b) At the date of the adoption of this article, no Town property was zoned in a manner that allows for any adult entertainment establishment. There are properties, however, that are within one-half mile from the Town boundary that do provide appropriate zoning for said establishments.

(c) This is considered to constitute reasonable alternative avenues of expression, for small cities with a high residential density. Should adjacent property with appropriate zoning be annexed into the Town, they will be permitted according to the requirements of this article.

Sec. 6-28. Establishment to comply with zoning, building, fire, health codes and other applicable laws.

No adult entertainment establishment shall be conducted on any premises which does not comply with all zoning regulations, as well as the building code, fire code, health codes and other ordinances and laws of the Town, the county and the state.

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Page 43 of 596**Sec. 6-29. Prohibited acts.**

(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) No person or licensee shall admit or permit the admission of any individual under the age of 18 or allow such

individual to remain within a licensed premises.

(1) A licensee means any person, association, partnership, corporation or other business entity which has obtained a valid Town license for the operation of an adult entertainment establishment.

(2) A licensed premises means any adult entertainment establishment which has obtained a valid Town license.

No person or licensee shall sell, exchange, barter, trade, give or offer to sell, exchange, barter, trade or give, to any individual under the age of 18 years of age any entertainment, service, material device or thing offered, for sale or otherwise, at an adult entertainment establishment.

No licensee shall permit or suffer an employee or other person to appear nude or seminude where there is an individual payment offer or solicitation of money occurring between patron and employee.

No licensee shall permit any employee or patron to use artificial devices or inanimate objects to depict any of the prohibited activities described in this article.

No licensee shall suffer or permit an employee or any person on the premises to insert an object into her vagina or his or her anal orifice, except for personal hygiene or necessity.

No licensee shall suffer or permit an employee or any person on the premises to engage in actual or simulated genital masturbation or, in the case of females, fondling of the breasts.

No licensee shall suffer or permit a male employee or any person on the premises to exhibit an unclothed erect penis.

No licensee shall suffer or permit an employee or any person on the premises to engage in or simulate bestiality.

No person, other than a dancer or entertainer while on any licensed premises, shall expose or be permitted to expose to public view with less than a complete and opaque covering of his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, and if a female, her breasts below a point immediately above the top of the areola.

No employee or person while on a licensed premises shall be permitted to dance or perform nude or seminude in such a manner as to simulate specified sexual activity with any patron, spectator, employee or other person not employed therein.

No person, while on a licensed premises, shall, while nude or seminude, be permitted to sit upon or straddle the legs, lap or body of any patron, spectator, employee or other person therein, or to engage in or simulate sexual activity while touching or being touched by the patron, spectator or other person.

No licensee shall suffer or permit the use of any areas on the premises of such establishment for sexual contact or private dancing performance or entertainment.

No dancer or entertainer while on a licensed premises shall dance on a platform intended for that purpose which is not raised at least 18 inches from the floor. Furthermore, no dancing shall occur closer than four feet from any patron.

No licensee shall suffer or permit any signage or advertisement which encourages, solicits, induces or promotes conduct or activities prohibited by this article or anything in conflict with state law.

No erotic entertainment/dance establishment licensee shall serve, sell, distribute or suffer consumption or possession of any alcoholic beverages or controlled substances upon the premises of a licensee.

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

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Page 44 of 596 **Sec. 6-30. Zoning and distance requirements for establishments, businesses or uses.**

The Town adopts the Barrow County Unified Development Code as amended.

(Ord. No. 11-16-2023, Res. 17 April 2014).

Sec. 6-31. Establishment employees.

(a) (b) (c) (d) (e) (f) (g) *Age.* Employees of adult entertainment establishments shall be not less than 18 years of age.

Disqualification due to criminal record; exception. No person shall be employed in any capacity whatsoever including, but not limited to, performers, entertainers, waiters, bouncers, bartenders, disc jockeys and musicians, who have been convicted in this or any other Town or state or in any federal court within five years immediately prior to the application for employment of soliciting for prostitution, pandering, letting premises

for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses, or any charge relating to the manufacture or sale of intoxicating liquors, or any other felony or misdemeanor involving moral turpitude, or for whom any outstanding warrant exists on which service has not been perfected. The expression "be employed" shall include all work done or services performed while in the scope of employment on the premises and elsewhere than on the licensed premises, for compensation or otherwise. Notwithstanding, this section shall not apply to an independent contractor who performs accounting, legal, administrative, repair or maintenance services for a licensee.

Work permit; required; independent contractors; exception. A permit to work in or be employed by an adult entertainment establishment, whether for compensation or otherwise, shall be required for all employees thereof. For the purpose of this article, independent contractors, such as entertainers employed or hired by any adult entertainment establishment, shall be licensed as employees, regardless of the business relationship with the owner or licensee of any adult entertainment establishment. Each independent contractor shall be required to have and maintain his or her separate business license. Notwithstanding, this subsection shall not apply to an independent contractor who performs accounting, legal, administrative, repair or maintenance services for licensee. No person requiring a permit may be employed by or work in an establishment until such person has filed an application, paid the fee, as set forth in the schedule of fees and charges, and obtained a work permit from the director of administration.

Contents of work permit application; investigation of applicant; issuance. An application for a permit shall include, but shall not be limited to, the name, address, business name and address, date of birth and prior arrest record of the applicant. The director of administration shall make a complete search relative to any police record of the applicant. If there is no record of a violation of subsection (b) of this section, or of any other section of this article, the director of administration shall issue a permit to the applicant.

Denial; application for hearing with public safety director; decision; appeal to Town council. Any applicant denied a permit may, within ten days of the denial, apply to the public safety director for a hearing. The decision of the public safety director, after hearing, may be appealed to the Town council.

Expiration of permit for employment. Any permit for employment issued under this article shall expire 12 months from the date of issuance unless earlier revoked or suspended. The director of administrations may prescribe reasonable fees for certifying the eligibility for employment.

Availability of permit for inspection. Employees holding permits issued pursuant to this article shall at all times during their working hours have such permits available for inspection at the premises.

Sec. 6-32. Required; issuance not to condone any illegal act; display.

It shall be unlawful for any person, association, partnership, corporation or other business entity to engage in, operate, conduct or carry on, in or upon any premises, an adult entertainment establishment without first having complied with the provisions of this article, or without a currently valid Town license for the operation of an adult entertainment establishment. No license issued under this article shall condone or make legal any activity thereunder

Page 45 of 596 if the same is deemed illegal or unlawful under the laws of the state or the United States or under any other ordinance, rule or regulation of the Town. The license shall be conspicuously displayed at all times within the premises.

Sec. 6-33. Licensing generally.

The Town will review all license permit applications in a timely manner. The Town's designated administrator will respond to the applicant within 14 day as to whether the permit was accepted or submitted to attorney for further review. Attorney review will be completed in ten days.

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) *Grant of privilege for term of license.* All licenses shall be a mere grant of privilege to carry on such business during the term of the license, subject to all the terms and conditions imposed by this article and related laws, applicable provisions of this Code and other ordinances and resolutions of the Town relating to such business.

Wording. All licenses under this article shall have printed on the front these words:

"This license is a mere privilege subject to be suspended and revoked under the provisions of the ordinances of the Town of Carl."

Separate license for each business. A separate license shall be required for each place of business.

Age of licensee. No license shall be issued to any person who is less than 21 years of age.

Application; contents. Application for a license shall be written and on forms supplied by the Town clerk. Such application shall state the name and address of the applicant; the place where the proposed business is to be located; the nature and character of the business to be carried on; if a partnership, the names of the partners; if a corporation, the name of the officers and shareholders; if other business entity, then the names of all persons holding any ownership or managerial interest therein; and such other reasonable information as may be required by the director of administrations.

Duty of applicant to supply data, information and records. All applicants shall furnish all data, information and records requested of them by the Town and pay an administrative investigation fee to be determined by the director of administrations. Failure to furnish such data, information and records within 30 days from the date of such request shall mean an automatic denial of the license.

Definition. For the purpose of this division, the term "applicant" means and shall include a person and, in the case of a partnership or corporation, all partners, officers, directors, principals, and shareholders of the partnership or corporation.

Completion of application required. Each application must be complete in its entirety before being accepted by the Town for filing and processing.

Plans furnished by applicant; compliance with Town codes. All applicants for licenses shall furnish plans of the proposed premises. The applicant shall comply with all zoning, building, health and similar Town codes.

Verification of application under oath. Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:

- a. If the applicant is an individual, the individual;
- b. If by a partnership, by the manager or general partner;
- c. If a corporation, by the president of the corporation; and
- d. If any other organization or association, by the chief administrative official.

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Page 46 of 596**Sec. 6-34. Coordination with federal law.**

Whenever the governing authority finds that the application of this article would unreasonably discriminate among providers of functionally equivalent personal wireless services or prohibit or have the effect of prohibiting the provision of personal wireless services, a conditional use permit waiving any or all of the provisions of this article may be granted.

Chapter 10 ALCOHOLIC BEVERAGES

ARTICLE I. IN GENERAL

Sec. 10-1. Purpose and authority to regulate alcoholic beverages in the Town.

(a) (b) This ordinance has been enacted in furtherance of the police powers of the Town and in accordance with a plan designed for the purposes, among others, of promoting the health and general welfare of the community, establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, protecting and preserving schools and churches, giving effect to existing land use and preserving certain residential areas, with reasonable considerations, among others, to the character of the areas and their peculiar suitability for particular uses, the congestion in the roads and streets, and with a general view of promoting desirable living conditions and sustaining stability of neighborhood and property values, and to protecting against the evils of concentration of ownership or control of the retail outlets for alcoholic beverages or to prevent undesirable persons from controlling the retail alcoholic beverage industry.

The provisions of this ordinance are ordained under and by virtue of the authority granted by the laws of the State of Georgia, O.C.G.A. Title 3; Regulation of Alcoholic Beverages Generally, to adopt all reasonable rules and regulations as may fall within the police powers of the municipality to regulate any such business; O.C.G.A. Section 3-4-110, granting such municipality the full power to adopt all reasonable rules and regulations governing the conduct of any such licensee including, but not limited to, the regulation of hours of business, types of employees, and other matters which may fall within the police powers of such municipality; O.C.G.A. Section 3-5-40 and 3-5-42, authorizing municipal licenses for the business of manufacturing, distributing and selling malt beverages at wholesale and retail; and O.C.G.A. Section 3-6-40, authorizing municipal licenses for the manufacturing, distributing and selling wine at wholesale and retail.

Sec. 10-2. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them:

§Editor's note(s)— (The Code of the Town of Carl, Georgia 1991, §32, adopted March 18, 2010, amended August 18, 2011.)

State law reference(s)—Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.; power to license and regulate alcohol, O.C.G.A. § 36-31-7; definitions, O.C.G.A. § 3-1-2; notice to Department of Revenue of violations relating to sale of alcoholic beverages to underage persons, O.C.G.A. § 3-3-2.1; providing, purchasing, and possession of alcoholic beverages for and by persons under 21 years of age prohibited with exceptions, O.C.G.A. §§ 3-3-23, 3-3-23.1; persons under 18 prohibited from selling alcohol with exceptions, O.C.G.A. § 3-3-24; excise tax on distilled spirits for sale by the drink, O.C.G.A. § 3-4-130; maximum municipal license fee for distilled spirits, O.C.G.A. § 3-4-50; municipal license requirements for malt beverages, O.C.G.A. § 3-5-40 et seq.; municipal license requirements for wine, O.C.G.A. § 3-6-40; Sunday sale of alcoholic beverages, O.C.G.A. § 3-3-7; sale of alcoholic beverages on election days, O.C.G.A. § 3-3-20.

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Page 47 of 596*Alcoholic* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means all alcoholic, distilled spirits, malt beverages, wine, or fortified wine as defined in this section.

Bed and breakfast establishment means an operator-occupied residence with 20 guestrooms or less, which serves food only to its registered guests, and serves only a breakfast or similar morning meal and an appropriate light snack in which the price of the food is included in the price of the overnight accommodation. For purposes of these rules, "bed and breakfast establishment" refers to an establishment in which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest and provides sleeping accommodations for no more than 30 consecutive days to a particular guest.

Brown bagging means the act of patrons entering any restaurant, private club, or other establishment providing food or entertainment in the normal course of business and bringing in and consuming the patrons' own alcoholic beverages.

Brown bag establishment means any restaurant, private club or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume on the premises the patrons' own alcoholic beverages.

Brew pub means any eating establishment in which malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in Section 3-5-36 of the Official Code of Georgia Annotated for retail consumption on the premises and solely in draft form. As used in this chapter, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Brewer means a manufacturer of malt beverages.

Distilled spirits means any alcoholic beverage obtained by distillation or containing more than 24 percent alcohol by volume including, but not limited to, all fortified wines, whiskey, rum, gin, brandy, vodka, tequila and all other alcoholic beverages of a similar nature and with similar alcoholic content.⁹

Family means any person related to the holder of a license within the first degree of consanguinity or affinity as computed according to civil law.

Food caterer means any person who prepares food for consumption off the premises.

Fortified wine means any alcoholic beverage containing more than 24 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. "Fortified wine" includes, but is not limited to, brandy.

Hotel means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests. To meet the definition of "hotel" under this chapter the facility must have 50 or more rooms used for sleeping accommodations of such guests and one or more public dining rooms, with an adequate and sanitary kitchen and a seating capacity of at least 25 persons, where meals are regularly served to such guests. As used in this section, "seating" shall mean that no more than 25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals. All sleeping accommodations and dining rooms must be on the same premises and a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant in their premises, and the holder of such franchise shall be eligible for a license under the "hotel" classification. At least 50 percent of the receipts of the dining room or rooms shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation are all receipts of all persons laboring in the dining room, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel. Not to include in tabulation, however, are persons called in the dining room from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts

⁹ The sale of Distilled Spirits must be approved by referendum before such sale is authorized in the Town.

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Page 48 of 596 for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 10-74. Receipts for room rentals shall not be included in the calculations.

Individual means a natural person, not a corporation or a partnership.

Lounge/bar means a separate room connected with, a part of, and adjacent to, a restaurant or a room located in hotels as defined herein, and for which the sale of food is incidental to the sale of beverages.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume, and including, but not limited to, ale, porter, brown, stout, lager beer, malt

liquor, small beer and strong beer. The term does not include sake, known as a Japanese rice wine.

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

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

Meal, regular meal means a meal that is prepared on the premises according to the order of the patron or customer given to a server at the table, booth or counter area where the customer is seated and served by the server at said table, booth or counter area.

Minor means any person under the age of 21 years.

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

Person means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private or quasi-public.

Premises/outlet means a definite enclosed area or other outside area with controlled ingress and egress wherein distilled spirits, alcoholic beverages, malt beverages, or wine is sold and consumed, or sold therein by the package to be consumed elsewhere.

Private club means a corporation or association organized and existing under the laws of the state, actively in operation within the Town prior to the application for a license hereunder, having at least 75 members regularly paying dues, for at least three years prior to application for license, organized and operated exclusively for pleasure, recreation and other nonprofitable purpose, no part of the net earnings of which inures to the benefit of any shareholder or member, and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable sanitary kitchen and dining room seating of at least 25 persons and equipment, and maintaining and using a sufficient number of servants and employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of distilled spirits, wines, or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body, out of the general revenue of the club. No more than 25 percent of required seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals. For the purpose of this subsection, tips that are added to the bills under club regulations shall not be considered as profits hereunder. In addition, at least 50 percent of the receipts from the operation of the kitchen and dining room and serving of meals shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel, not to include however

persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 10-74. A private club organized or operated primarily for the selling or serving of alcoholic beverages by the drink shall

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Page 49 of 596not be licensed under this chapter, nor permitted to sell or serve such beverages at all. All distance requirements as set forth in this chapter shall apply.

Private residence, for the purpose of applying distance restrictions for the sale of alcoholic beverages from a private residence means a house, dwelling or structure where in not less than one, nor more than two, families reside and shall not include a mobile home court, an apartment house having facilities for housing more than two families, nor a boarding or rooming house where there are five or more boarders or roomers. Any building occupied as a residence located within an area zoned for commercial or mixed-use activity shall not be construed as a private residence.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served, but not including short order or quick or fast food shops, such place being provided with adequate and sanitary kitchen and dining room seating of at least 25 persons, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. The phrase, "meals are actually and regularly served" means that meals are available to the public no less than five days per week, with service occurring during at least one of the following time frames, 11:00 a.m. to 2:00 p.m. or 5:30 p.m. to 7:30 p.m., and with the restaurant being open for business a minimum of 48 weeks per year. Meals shall be served during the normal business hours when the establishment is open to the public and the serving of such meals shall be the principal business conducted, with the serving of distilled spirits, malt beverages and wines to be consumed on the premises as only incidental thereto. As used in this section, "seating" shall mean that no more than 25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals. As used in this section, "principal business" shall mean that at least 50 percent of the receipts of such business shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 10-74.

Retail consumption dealer means any person who sells alcoholic beverages for consumption on the premises at retail.

Retail package dealer means any person who sells distilled spirits, malt beverages and/or wine in unbroken

packages for consumption off the premises at retail.

Sales by the drink means the sale of alcoholic beverages by a licensed retail consumption dealer for consumption on the premises at retail only to consumers and not for resale.

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

Wine means any alcoholic beverage containing not more than 24 percent alcohol by volume made from fruits, berries, grapes, or other natural products by natural fermentation. "Wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, sake, natural wines, rectified wines, hard ciders, and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this code section.

((The Code of the Town of Carl, Georgia 1991, §32 as amended))

Sec. 10-3. Sale, possession, etc., of alcoholic beverages on which state tax or license fee not paid prohibited.

It shall be unlawful for any person to sell at retail or otherwise within the Town, possess, conceal, store or convey any wine, malt beverage, distilled spirits or other alcoholic beverages on which any tax or license fee imposed by the laws of the state of Georgia or this ordinance has not been paid, and any such beverages as above described that are found without a state tax stamp shall be seized as contraband and immediately delivered to the TOWN OF CARL, Georgia, Code of Ordinances

Page 50 of 596state revenue commissioner as provided by law. Any violation of this section shall be punished as provided for in the Code of Ordinances of the Town of Carl, and, if performed by a licensed dealer, shall constitute due cause for revocation or suspension of such person's alcoholic beverage license.

Sec. 10-4. Purchase, possession, etc., by underage persons.

(a) (b) (c) (d) (e) (f) Except as otherwise authorized by law:

(1) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age.

(2) No person shall fail to check the proper identification of any patron or other person, which failure results in the furnishing or sale of alcoholic beverages to any person under 21 year of age.

(3) No person under 21 years of age shall purchase or knowingly possess any alcoholic beverages.

(4) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage.

(5) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person less than 21 years of age.

(6) No person under 21 years of age shall misrepresent his/her identity or use any false identification for the

purpose of purchasing or obtaining any alcoholic beverage.

The prohibitions contained in subsection (a)(1), (2) and (5) of this section shall not apply with respect to the sale, purchase or possession of alcoholic beverages for consumption:

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

(2) At a religious ceremony.

The prohibition contained in subsection (a)(1) of this section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this section, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate.

If such conduct is not otherwise prohibited pursuant to O.C.G.A. §3-3-24, nothing contained in this section shall be construed to prohibit any person under 21 years of age from:

(1) Dispensing, serving, selling, or handling alcoholic beverages as a part of employment in any licensed establishment;

(2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or

(3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

Notwithstanding the provisions of subparagraph (4) above, no person shall allow or require a person less than 18 years of age nor shall a person under 18 years of age take an order for alcoholic beverages for on-premises consumption or accept alcoholic beverages for checkout for off-premises consumption.

All violations of this section with the exception of subsection (a)(2) shall be treated as state offenses pursuant to O.C.G.A., Sec. 3-3-23.1; provided that first offenses subject to the jurisdiction of the municipal court pursuant to O.C.G.A. Sec. 36-32-10 may nevertheless be heard by the municipal court. In addition to prosecution as a state offense, any violation of this section may also serve as due cause for the suspension, revocation or probation of an alcoholic beverage license and/or employee permit issued by the Town.

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Page 51 of 596 **Sec. 10-5. Consumption prohibited; Open containers.**

(a) (b) (c) (d) (e) As used in this section, "open container" means any container containing alcoholic beverages, which is immediately capable of being consumed from or the seal of which has been broken.

No person shall possess an open container of any alcoholic beverage while operating a motor vehicle in this Town or while occupying a motor vehicle as a passenger. An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger. This provision

shall not apply if the alcoholic beverage is located in a locked glove compartment, locked trunk, or other locked non-passenger area of the vehicle. This provision is intended to prohibit the consumption of alcoholic beverages by the operator and passengers in motor vehicles.

No person shall possess an open container of an alcoholic beverage while walking, standing or otherwise occupying any public street, road, or highway, sidewalk adjacent thereto, public park, or public parking lot. Consumption of alcoholic beverages in or on other publicly owned properties of the Town is prohibited. This provision shall not apply to (1) the patrons of an outdoor cafe if such establishment is otherwise licensed to sell alcoholic beverages under the applicable laws and ordinances, (2) Town sponsored special events, or (3) other privately sponsored events at which an alcoholic beverage catering permit has been issued.

No person shall possess an open container of an alcoholic beverage on the premises of any retail package licensee, including parking lots located adjacent thereto.

No person shall enter or leave the premises of an establishment licensed to sell or dispense alcoholic beverages for consumption on the premises with an open container of any alcoholic beverage.

Sec. 10-6. Public drunkenness.

It shall be unlawful for any person in this Town to be in an intoxicated condition in any public place or within the curtilage of any private residence not his/her own other than by invitation of the owner or lawful occupant, when such condition of intoxication is made manifest by boisterousness, or by indecent condition or act, or by vulgar, profane, or loud language.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, §31-102)

Sec. 10-7. Sale of alcoholic beverages by the drink for consumption only on the premises.

No person shall be allowed to sell, distribute, or give away alcoholic beverages by the drink for consumption on the premises except as set forth in this chapter.

Sec. 10-8. Establishments to be kept in orderly manner.

It shall be the duty of all persons or employees of persons granted a license under this chapter to keep the premises clear at all times of all persons who are intoxicated or who cause a public disturbance.

Sec. 10-9. Times for sales.

(a) Retail package dealers shall not engage in the sale of alcoholic beverages in original packages for off-premise consumption except between the hours of 7:00 a.m. and 12:00 midnight Monday-Saturday.

(b) Except as otherwise provided in this section, malt beverages, wine and distilled spirits shall not be sold for consumption on the premises, except between the hours of 9:00 a.m. and 2:00 a.m. of the following day, Monday through Friday, and on Saturdays from 9:00 a.m. until 12:00 midnight.

(c) Retail consumption dealers who have a Sunday sales permit may sell malt beverages, wine, and distilled spirits for consumption on the premises from 12:30 p.m. until 12:00 midnight.

Page 52 of 596(d) The sale of alcoholic beverages on election days is permitted within the Town in accordance with O.C.G.A. § 3-10-20.

(e) Retail package dealers who have a twenty-four (24) sales permit may sell malt beverages and wine twenty-four (24) hours per day Monday-Saturday.

Sec. 10-10. Signs to be posted.

In addition to required postings under state law,

(1) Each outlet for the retail package sale of alcoholic beverages shall post in a conspicuous place within the outlet a sign with letters at least two inches high reading: "Sale of alcoholic beverages to persons under 21 years of age is prohibited."

(2) Each outlet for the retail sale of alcoholic beverages by the drink for consumption on the premises shall post in a conspicuous place within the outlet a sign with letters at least two inches high reading: "Sale of alcoholic beverages to persons under 21 years of age is prohibited."

Sec. 10-11. Deliveries prohibited off premises.

(a) It shall be unlawful for any wholesaler or distributor to make deliveries of alcoholic beverages except to a location licensed for the retail sale of such beverages.

(b) It shall be unlawful for any retail package dealer or person licensed to sell alcoholic beverages by the drink for consumption on the premises to make deliveries of any malt beverages, wine and/or distilled spirits to any location off the licensed premises.

(c) The prohibition set forth in subsection (b) shall not apply to hotel in-room service that shall be regulated as set forth in section 10-75.

Sec. 10-12. Sales on licensed premises.

Only those individuals who are compensated as regular agents, clerks, or employees of the licensee shall handle, sell or serve alcoholic beverages on a licensed premises.

Sec. 10-13. Sale to intoxicated person forbidden.

Alcoholic beverage licensees and their agents and employees are prohibited from selling, bartering, exchanging, giving, providing, or furnishing any alcoholic beverage to any person who is in a noticeable state of intoxication.

Sec. 10-14. Alcoholic beverage sales for cash only.

All sales of alcoholic beverages shall be for cash upon sale. Sales on credit are specifically prohibited except that the use of a credit card for the purchase of distilled spirits, malt beverages or wine shall not be prohibited. The running of a "tab" at a licensed consumption premises shall not be prohibited provided the consumer pays all charges prior to departing the premises.

Sec. 10-15. Sale of alcoholic beverage without Town license.

It shall be unlawful for any person to manufacture for sale, or possess, for the purpose of sale, any alcoholic

beverage where such person does not have a license or catering permit from the Town to sell or possess for sale such alcoholic beverage.

Secs. 10-16—10-20. Reserved.

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Chapter 10 - ALCOHOLIC BEVERAGES

ARTICLE II. LICENSING AND PERMITS

ARTICLE II. LICENSING AND PERMITS

Sec. 10-21. License required to sell or provide alcoholic beverages.

No alcoholic beverage shall be sold or otherwise provided to members of the public without first having obtained the appropriate state and Town licenses and/or permits.

Sec. 10-22. License and permit fees.

The fees for licenses and permits for the sale of alcoholic beverages shall be:

- (1) Retailer dealers—malt beverage and wine package sales \$500.00
- (2) Retail dealers: distilled spirits by the package \$5,000.00
- (3) Wholesale dealer, malt beverages or wine \$200.00
- (4) Restaurant, retail consumption malt beverages and wine only \$500.00
- (5) Private club, retail consumption, malt beverages and wine only \$500.00
- (6) Restaurant, private club, retail consumption, distilled spirits, malt beverages and wine \$2,800.00
- (7) Brew pub \$1,000.00
- (8) Catering permit/temporary permit \$250.00
- (9) Brown bag establishment permit \$ 250.00
- (10) Bed and breakfasts \$250.00
- (11) Sunday sales permits for retail sales \$250.00
- (12) Background check \$100.00
- (13) Twenty-four (24) hours sales permit for retail sales \$500.00

Sec. 10-23. Designation of persons who may serve as licensees and representatives.

The licensee for all businesses shall meet the following requirements:

- (1) If the business is to be operated by an individual, the licensee shall be that individual.
- (2) If the business is to be operated by a partnership, the licensee shall be an individual who is a partner; or, if all partners are non-individuals, then the licensee shall be an individual who is an officer of any corporation which is a partner, or, an individual who is an officer, manager or agent of any unincorporated entity which is a partner.
- (3) If the business is to be operated by a corporation, the licensee shall be an officer of the corporation.

Sec. 10-24. Personal interests; restrictions on number of licenses.

(a) An individual is deemed to have an interest in a license if:

(1) He/she is the owner of the license.

(2) He/she is the co-owner of the license.

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Page 54 of 596(3) He/she is a partner in any partnership that owns an interest in a license.

(4) He/she is a stockholder holding more than 5% of the stock in any corporation and/or is a stockholder in any corporation that has fewer than 25 stockholders, which owns an interest in a license.

(5) He/she shares in any income or corpus of any trust fund having any interest in a license.

(b) No person, or member of his/her family, shall own, hold or control any interest in more than:

(1) Two (2) licenses to sell wine at retail in the Town;

(2) Two (2) licenses to sell malt beverages at retail in the Town;

(3) Two (2) combined licenses to sell alcoholic beverages for consumption on the premises in the Town;

(4) One (1) license to operate as a retail consumption dealer or retail package dealer if said person also has an interest in a license to operate as a wholesale dealer in the Town;

Provided that no more than a total of two licenses shall be issued for the sale of any type of alcoholic beverages to any one (1) person or member of his/her family.

(c) Combining retail and retail consumption licenses. No premises licensed for the retail sale of alcoholic beverages shall hold a license for or allow the retail consumption on the premises of alcoholic beverages.

(d) The number of retail package licenses for the sale of distilled spirits in the Town shall be limited to one license per 500 residents, or fractional part of 500 residents, as determined by reference to the U.S. Census of 2010 or the latest decennial census.

Sec. 10-25. Agents for service of process.

Both the licensee or license representative shall be the authorized and duly constituted agent for service of all notices and processes required to be served on or given hereunder for any action or proceeding or uses of any nature whatsoever permitted under the provisions of this chapter or under any other provisions of this Code.

Sec. 10-26. Qualifications of applicants.

(a) No license under this chapter shall be granted to any applicant who is not a citizen of Georgia or a permanent resident alien. If the applicant is a partnership, the requirements of this section shall apply to all partners.

(c) The following persons are disqualified as licensees:

(1) A person who is not of good character and reputation in the community in which he/she resides.

(2) A person who has entered a plea of nolo contendere within a five year period prior to the date of application for a license, entered a guilty plea or been convicted of a felony, or of a crime involving moral turpitude; or who has entered a plea of nolo contendere within a five year period prior to the date of application for a license, entered a guilty plea or been convicted of a crime involving violation of the

ordinances of any Town or county relating to the use, sale, manufacture, distribution, taxability or possession of malt beverages, wine or distilled spirits or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation, use, or sale of malt beverages, wine or distilled spirits, or taxability thereof.

(3) A person whose license to sell alcoholic beverages has been revoked for cause within the preceding 10 years.

(4) A person whose place or business is conducted by a manager or agent unless such manager or agent qualifies as the license representative.

(5) Any person who is under the age of 21 years.

(6) Any person who is not of sound mind and memory.

(7) Any person who is not eligible for a state alcoholic beverage license.

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Page 55 of 596 **Sec. 10-27. Contents of application for license.**

(a) All persons desiring to obtain a license under this chapter for the sale of alcoholic beverages shall apply to the Town upon forms prepared and provided by the Town clerk and shall include with such application all information and documents required by this chapter. Such application shall state:

(1) The location of the proposed business;

(2) The nature and character of the proposed business and type of license applied for;

(3) If the business is to be operated by an individual, the name and address of that individual;

(4) If the business is to be operated by a partnership, the names and addresses of all general partners, the licensee and the license representative;

(5) If the business is to be operated by a corporation, the name of the corporation, the address of the corporate office, the name and address of the registered agent for service of process for the corporation, the name and address of all officers and shareholders holding more than 15 percent of the stock of the corporation, and the name and address of the licensee and license representative; and

(6) Such other appropriate information as may be required by the Town.

(b) The truth of the contents of an application for a license shall be sworn to by the licensee and the license representative.

(c) The license applicant shall also file with the Town clerk a completed State of Georgia Department of Revenue Alcohol License Application form CRF-009 that has been or will be filed with the State.

(d) The application, when filed with the Town clerk, shall be accompanied by a processing and investigation fee of \$350.00. Such fee shall cover costs of investigating the license applicant and shall be credited against the first annual license fee upon grant of a license. Said processing fee will not be refunded if the requested license is not granted.

(e) When the license is approved, the license fee must be paid by certified check or cash within 30 days and prior

to the issuance of the license.

(f) If the person applying fails to receive a license from the State of Georgia, any license fees in excess of the processing and investigative fees paid to the Town shall be refunded.

(g) Only one application form and accompanying documents shall be filed for each business premises.

Sec. 10-28. Supporting documents to be filed with application.

Those applying for a license shall submit in support of the application for license the following documents;

(1) A certificate from a Georgia registered land surveyor showing a scale drawing of the location of the proposed premises and the shortest straight line distance from the closest point of the licensed premises to the nearest property line of any housing authority property, church building, alcoholic treatment center building, school building, educational building, school, college building, college campus, or other establishments engaged in the sale of alcoholic beverages located within a radius of 600 feet of the premises.

(2) The affidavit of each person whose name appears on an application for a license, pursuant to section 10-27 of this chapter, swearing that said person has not, within five years prior to the date of the application, been convicted of or entered a plea of guilty or nolo contendere to any felony, misdemeanor involving moral turpitude, or any charge relating to the sale, manufacture, distribution, taxability, possession or use of alcoholic beverages or illegal drugs, including the offense of driving a motor vehicle under the influence of alcohol or drugs.

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Page 56 of 596(3) A copy of a deed showing the applicant to be the owner of the premises for which the license is sought or a copy of a lease showing any interest the owner of the premises has in the premises for which the license is sought.

(4) A signed release authorizing the Town clerk to have the Barrow County Sheriff run a GCIC report.

(5) If the same person intends to serve as the licensee and the license representative, he/she shall submit an affidavit certifying that he/she is at least 21 years of age.

(6) An affidavit of notice placement through signage pursuant to sec. 10-33(b) of this chapter.

(7) An affidavit from the publisher of the Town's official legal organ of legal notice of license application, pursuant to sec. 10-33(a) of this chapter.

Sec. 10-29. Misleading or omitted information.

Any untrue or misleading information contained in or material omission left out of an original application for a license under this chapter shall be cause for the denial thereof. If any license has been granted under these circumstances, there shall be cause for revocation of same.

Sec. 10-30. Compliance with zoning regulations.

(a) No license under this chapter shall be issued unless the location proposed for the business is in compliance with currently applicable provisions of the zoning ordinance, as amended.

(b) The provisions of this section shall not apply to those business establishments holding a valid retail package license for the sale of malt beverages and /or wine on the date of adoption of this chapter provided that such license remains current.

Sec. 10-31. Payment of taxes and other debts to Town.

The Town clerk shall cause an inquiry to be made into the tax records to determine if any applicant or other parties interested in an application have any outstanding taxes, special assessments, unpaid utilities or any other monies owed to the Town. No license shall be issued, renewed or considered for issuance to an applicant that has any outstanding obligations to the Town.

Sec. 10-32. No licenses issued within prohibited distances.

(a) No alcohol license shall be issued pursuant to this chapter to sell or offer to sell:

(1) Any distilled spirits by the package in or within 50 yards of any church building or within 100 yards of any school building, educational building, school ground, or college campus.

(2) Applicants for licenses for the retail sale of alcohol beverages for consumption on the premises shall not be subject to regulations as to distances from churches, schools, and colleges.

(b) *Schools applicable.* The schools or colleges referred to herein shall include only such state, county, Town, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state, and which are public schools or private schools.

(c) *Method of measuring.* The distances set out in subsection (a) shall be measured by the most direct route of travel on the ground.

(d) The provisions of this section shall not apply to those business establishments holding a valid retail license for the sale of alcoholic beverages on the date of adoption of this chapter provided that such license remains current and does not become and remain inactive for a period exceeding 12 months from the date last issued.

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Sec. 10-33. Notice of application advertisement.

(a) (b) All persons applying for a license under the terms of this chapter shall give notice of that application by placing a notice in the Town legal organ for two consecutive weeks prior to the week when the application shall be heard by the Town council. An affidavit from the publisher of said legal organ shall be filed with the Town clerk prior to the hearing.

Said notice shall contain the location of the proposed business, names of all persons as they appear on the application as required by section 10-27 of this chapter, and the date and time the Town council will hear the application. The advertisement shall be the type used for legal ads in the legal organ of the Town, and the notice referred to shall be in the following form:

NOTICE OF APPLICATION FOR RETAIL LICENSE TO SELL ALCOHOLIC BEVERAGES

_____, has/have made application to the Council of the Town of Carl \ for a retail license to sell alcoholic beverages at the following location _____. The application will be heard by Town

Council at a public hearing to be held at ___ o'clock ___.m. on the ___ day of _____, 2__.

Signed License Applicant

Note: Names of the individual, general partners, corporation, licensee and license representative must be shown.

Sec. 10-34. Consideration of application.

- (a) Applications shall be reviewed by the Town clerk for completeness and the applicant notified of any deficiencies in the information provided. If the applicant fails to complete the application by supplying the missing information of documents within 14 business days of request, the application shall be administratively denied by the Town clerk and the applicant notified of such by certified mail or personal delivery.
- (b) Upon receipt of a complete application, the application package shall be placed on the next agenda for the Town council, provided the next meeting occurs no sooner than seven days from receipt of the completed documents. At the Town council meeting, the mayor shall convene a public hearing and take comments from the applicant and any member of the public wishing to speak. The application shall be considered by the Town council only at a regular monthly meeting of the Town council.
- (c) All applicants for a license meeting the ascertainable standards of this chapter will be granted a decision on the license or licenses requested upon the hearing; and the mayor and Town council in applying the facts to the licensing criteria will act in a judicial capacity.
- (d) Upon the closing of the public hearing, the Town Council shall vote on approval or denial of the application. If the vote is to deny the application, the council shall provide to the Town clerk the reasons for denial under this chapter.
- (e) Whenever an application for license is denied by the Mayor and Town council the reasons for such denial shall be stated in writing and entered upon the minutes. Appeals from the denial of a license application shall be by writ of certiorari to the Superior Court of Barrow County.

Sec. 10-35. Issuance of license by Town clerk.

- (a) Upon approval of the application for license and the timely payment of the license fee, the Town clerk shall issue the appropriate license for the year in which said approval was granted.
 - (b) If issued to a corporation, said license shall be issued in the name of said corporation, the licensee and the license representative.
 - (c) If issued to a partnership, said license shall be issued in the name of all general partners, the licensee and the license representative.
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- Page 58 of 596(d) If issued to an individual, said license shall be issued to that individual as licensee and the license representative.

Sec. 10-36. Payment of license fee, pro-rated.

For any new license granted in any given year, the licensee shall pay the full annual license fee.

Sec. 10-37. Renewal of licenses by Town clerk.

All licenses shall expire on December 31 of the year of issue. The sale of alcohol without a valid license issued for the year in which the sale is offered is prohibited. Licenses may be renewed as herein set forth:

(1) The Town clerk may send a letter to all license holders on or before the first day of October of each year to remind license holders of the renewal deadline for the subsequent year; provided that it is the responsibility of the license holder to timely apply for renewal and any failure of the Town clerk to provide advance notice does not negate the expiration date of the existing license nor result in delayed deadlines for seeking renewal of licenses.

(2) The licensee shall file a renewal application form with the Town clerk on or before November 1 of each year.

(3) Each renewal application shall be referred to the chief of police, who shall report on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.

(4) If the chief reports any activity that constitutes due cause for not renewing a license, the renewal shall not be made by the Town clerk. "Due cause" shall consist of any action or violation as set forth in section 10-100 of this chapter.

(5) In the event due cause for non-renewal is found, written notice of the reason or reasons for such non-renewal shall be mailed or delivered to the licensee at the licensed premises or mailed to the address shown on the renewal application. The licensee shall have ten days from the date of the written notice to request a public hearing before the Town council, as provided for in section 10-100 of this chapter. As provided in sec 10-101(d) of this chapter, appeals from decisions of Town council are appealable via writ of certiorari to the Superior Court of Barrow County.

(6) Provided that "due cause" does not exist for not renewing the license, the Town clerk shall issue the renewal license upon payment of the annual license fee by the licensee on or before the last business day in November preceding the year for which the license is sought.

(7) If an alcoholic beverage license renewal application and license fee have not been filed with the Town clerk by the last business day in December of each year, the license shall be declared to be abandoned and any relicensing shall require a new application as set forth in sec. 10-22 through sec. 10-30.

(8) Any change in the name of the licensee or license representative shall require the filing of a new application and payment of the fee set forth in section 10-27(d) of this chapter.

Sec. 10-38. Completion of proposed licensed premises; additions to licensed premises.

(a) Prior to the construction, renovation or completion of a licensed premises, the applicant may obtain a license only if plans for the proposed premises comply with applicable provisions of this chapter; however, no sales of alcoholic beverages shall be allowed upon the premises until the premises are completed according to plans that were approved by the Town, a certificate of occupancy has been issued, and all other provisions of this chapter are met.

(b) Prior to the beginning of construction of any addition to a licensed premise, the licensee shall submit to the Town clerk a new survey and plans showing the location and dimensions of the addition to the licensed premises. Approval of the Town shall be required for any addition to ensure compliance with all applicable regulations governing the sale of alcoholic beverages. Following completion of the addition, the licensee shall furnish a certificate from the surveyor stating that the completed addition to the licensed premises is as shown

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on the plat of survey previously submitted. If any addition to the licensed premises is erected in violation of any provision of this chapter, the license granted hereunder shall be revoked by the Town and all fees forfeited.

Sec. 10-39. Time limit for commencement of business in licensed establishment; forfeiture for nonuse.

(a) All holders of licenses hereunder must, within six months after the issuance of the license, open the establishment referred to in the license. If the license holder fails to open the licensed establishment or receive a time extension from the Town council within the initial six-month period, the license shall expire, and all fees shall be forfeited.

(b) In the event any holder of a license who, after beginning operation, ceases to operate the business for a three-month period, the license shall expire and all fees shall be forfeited; provided that where damage has occurred to the premises through Act of God or other calamity (and not the fault of the licensee), resulting in closure of the premises for rebuilding or repairs, the Town council, upon request of the license holder, may waive the expiration of the license for such time as it deems reasonable given the nature of necessary repairs.

Sec. 10-40. Annexed areas; continuance of business.

Where a retail alcoholic beverage license exists in an area outside the Town limits, upon annexation of such area, the same may be continued, subject to all restrictions and requirements of this chapter except section 10-31.

Sec. 10-41. License transfers, changes of licensee or license representative or relocation of business or residency.

(a) Transfer of licenses. Retail alcoholic beverage licenses may be transferred from one owner to another with the approval of the Town clerk provided:

(1) The business has existed at the same location and licenses have not been transferred for more than one year.

(2) All existing alcoholic beverage licenses issued to the existing owner for that location shall be transferred.

(3) The new owner shall comply with all provisions of section 10-27 through 10-31 of this chapter except for subparagraph (a) provided such information was previously supplied by the existing owner or previous owners and has not changed.

(4) (5) The new owner passes a background check.

A transfer fee in the amount of \$100.00 is paid to the Town clerk upon filing of the request.

(b) Substitution of licensee or license representative.

(1) All requests for a change in licensee or license representative must be approved by the Town clerk and shall include all appropriate information or supporting documents required under Sections 10-27 and 10-28 of this chapter as outlined in an approved form to be supplied by the Town clerk for that purpose.

(2) The transferee and all persons identified in the transfer application pass the background check by the chief of police.

(3) A fee in the amount of \$100.00 is to be paid to the Town clerk upon the filing of the request.

(c) Temporary license representatives. As long as there is no change in ownership, a temporary license representative may be appointed by the licensee for a period not to exceed 30 days, subject to the following conditions:

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Page 60 of 596(1) That temporary license representative makes application by providing all appropriate information or supporting documents required under sections 10-27 and 10-28 of this chapter as outlined in an approved form to be supplied by the Town clerk for this purpose;

(2) That application is approved by the Town Clerk prior to the issuance of an amended license;

(3) There shall be no residence requirement for a temporary license representative; and

(4) There shall be no extension of the thirty-day period of operation for any temporary license representative, without approval of the Town clerk.

(5) No fee shall be required at the time of filing the application for a temporary license representative provided that within ten calendar days a request for a change in the license representative is filed in accordance with sec. 10-41(b) herein.

(d) All business relocations must be approved by the Town clerk and the licensee and license representative shall provide all appropriate information and supporting documents as required under sections 10-27 and 10-28 of this chapter. Requirements of section 10-33 relating to advertising must be met. Additional license fees shall not be required provided there is no change in the named licensee or license representative.

(e) Any change in residency by any party named in the license application (including but not limited to licensee, partners, and owners) shall be reported to the Town clerk within 30 calendar days.

(f) Any violation of this section shall constitute due cause for probation, suspension or revocation of the license or licenses granted by the Town council.

Sec. 10-42. Withdrawal of application.

Should any applicant fail to attend a public hearing before the mayor and council regarding a new license, a request to transfer a license, a request to change a license on a license representative, or a request to relocate the business of a license, the mayor and council may consider such application or request to have been withdrawn by the

applicant.

Sec. 10-43. Responsibility of licensee.

(a) Every applicant shall, prior to applying for a license, read and familiarize himself with the provisions of this chapter, and the application shall constitute a certification that applicant has done so. Every licensee shall maintain a copy of this chapter on the licensed premises and shall instruct each employee engaged in the sale or handling of alcoholic beverages concerning the relevant provisions of this chapter.

(b) An applicant shall be active in the operation of the licensed business and shall be personally present on the licensed premises sufficiently to ensure compliance with the provisions of this chapter. For purposes of this section, a licensee shall not be considered active unless he/she is an owner, stockholder, or fulltime employee of the licensed business and is present on the licensed premises a minimum of ten hours per week.

Sec. 10-44. Reserved.

Sec. 10-45. Bed and breakfast establishments.

(a) In addition to the general occupational tax certificate requirements of this Code, the following section shall apply to the licensing and operation of all bed and breakfast establishments furnishing alcoholic beverages for consumption by their guests. Should any provision of this section conflict with other provisions in this chapter, then this section shall control.

(b) All bed and breakfast establishments that have registered as such with the Town and paid an occupation tax to the Town may obtain a permit from the Town that allows the serving of alcoholic beverages to their registered guests, provided the applicant and any employees meet the requirements of this chapter for the licensing and serving of alcoholic beverages. Such establishments are not subject to food/beverage ratios applicable to

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restaurants. A licensed bed and breakfast may only provide that which is authorized by the alcoholic beverage license. No alcohol shall be provided to any person unless that person is a valid registered guest occupying a room within that facility and such alcohol is furnished as part of or in conjunction with their stay, the cost of which is absorbed into the room rental. All other provisions of this chapter not in conflict with this section shall apply to bed and breakfast establishments.

Sec. 10-46 Alcoholic beverage caterers.

(a) (b) (c) (d) (e) (f) (g) (h) For the purpose of this section, the following definitions shall apply:

(1) "*Food caterer*" means any person who, for consideration, prepares food for consumption off the premises.

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

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

Licenses may be obtained for the purpose of selling or dispensing alcoholic beverages by the drink on premises at which authorized catered functions are to be held. Such licenses shall be annual licenses and may be obtained only by those persons, firms or corporations already licensed by the Town for the sale of alcoholic beverages at retail or by the drink. The procedures for securing such licenses and the terms thereof, including license fees, shall be as provided in this chapter.

Before a licensed alcoholic beverage caterer may sell or dispense alcoholic beverages at any authorized catered function, such caterer shall obtain a permit. The application for permit shall include the name of the alcoholic beverage caterer, the caterer's license number, and the date, address and time of the event. No permit fee shall be charged for the alcoholic beverage caterer's license by the Town. For caterers licensed by jurisdictions other than the Town of Carl, a fee of \$50 per event permit shall be charged. No permit should be issued to any person under this section who does not hold an alcoholic beverage caterer's license from a local jurisdiction in the state of Georgia. The permit should be kept in the vehicle used to transport alcoholic beverages to the event at all times during which the permit is in effect.

Caterers licensed by a jurisdiction other than the Town of Carl shall maintain a record of all alcoholic beverages transported into the Town for the event and shall pay an excise tax to the Town covering all such beverages at the rates provided by this chapter. Failure to report and remit the tax within seven days of the conclusion of the event should be grounds for denial of subsequent permits to that caterer for similar events.

Caterers licensed by the Town shall maintain a record of all alcoholic beverages transported for each event, by event, and shall make report and remittance of excise taxes with the regular monthly reports to the Town.

No alcoholic beverages shall be transported, distributed or sold to other than licensed locations in the Town, except to authorized catered functions, unless otherwise authorized by this chapter or by state law. A licensed alcoholic beverage caterer may only sell or provide that which is authorized by his/her alcoholic beverage license. For example, if the alcoholic beverage vendor possesses a valid license to sell malt beverages, he/she may only sell malt beverages at the authorized special event or function.

The hours and days of sale or distribution of alcoholic beverages under this section shall be the same as provided for sales of alcoholic beverages by the drink.

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

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Page 62 of 596(i) As a condition of permit issuance, alcoholic beverage caterers licensed by jurisdictions other than by the TOWN shall be provided a copy of the Town's alcoholic beverage ordinances, and shall indicate, by their

signature, that they have received such ordinances and acknowledge the applicability of such ordinances to their operations.

(j) Exclusive of the license required herein, each alcoholic beverage vendor wishing to sell or distribute distilled spirits, malt beverages, or wine at an authorized special event or function within the Town must also apply for an event permit. The application for the event permit shall include the name of the caterer; the date, address, time and name of the event; and the quantity of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event or function.

(k) Nothing in this section shall prohibit the serving of alcoholic beverages in private living quarters by the host of such quarters to the host's guests, provided no third party is engaged in the bringing of alcoholic beverages onto the premises or serving such beverages to the host's guests.

Sec. 10-47. Temporary permit for bona fide non-profit civic organizations.

(a) Upon the filing of an application as required by Town clerk and payment of the appropriate fee by a bona-fide non-profit, tax-exempt civic organization, the Town clerk may issue a permit authorizing the organization to sell or serve alcoholic beverages for consumption only on the premises for a period not to exceed two days, subject to provisions of this chapter regulating the time for selling such beverages.

(b) No more than six permits may be issued to an organization in any one calendar year pursuant to this paragraph.

(c) Permits issued pursuant to this paragraph shall be valid only for the place specified in the permit. No permit may be issued unless the sale of distilled spirits, wine, or malt beverages is lawful in the place for which the permit is issued.

(d) Proof of such non-profit, tax-exempt status, such as a determination from the Internal Revenue Service that the organization is exempt under section 501-C of the Internal Revenue Code must be provided.

(e) Exclusive of the permit required herein, each person, firm or corporation wishing to sell or distribute distilled spirits, malt beverages, or wine at an authorized special event or function within the Town must also apply for an event permit. The application for the event permit shall include the name of the sponsor of the event; the date, address, time and name of the event; and the quantity of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized event or function.

(f) It is unlawful for any person to engage in, carry on or conduct the sale or distribution of alcoholic beverages off-premises and in connection with a special event or function without first having obtained a permit as provided herein.

Secs. 10-48, 10-49. Reserved.

ARTICLE III. REGULATION OF PACKAGE SALES

Sec. 10-50. Sale of package distilled spirits, malt beverages and/or wine conducted in conjunction with other business.

(a) No person shall be allowed to sell at retail package malt beverages, or foreign and domestic wines unless the same is sold in conjunction with one of the following types of businesses:

- (1) Grocery store;
- (2) Convenience store;
- (3) Motor vehicle fueling station;

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- (5) Specialty store dealing with food items, including supplies for the making of beer and wine;
- (6) Bakeries and coffee shops.
- (7) Retail package dealer licensed to sell distilled spirits.

(b) No person shall be allowed to sell at retail distilled spirits by the package unless same is sold in conjunction with a business licensed as a retail package dealer.

Sec. 10-51. Physical requirements of applicant's premises.

(a) No license shall be granted to a retailer under the provision of this chapter, unless the front entrance to the premises is clearly visible from a public street; provided, however, that this restriction shall not apply where the licensee has a location in a shopping center or multiple-story business building.

(b) Where a building in which a retailer intends to operate under the provisions of this chapter is at the time of the application for such license not in existence or not yet completed, license may be issued for such location, provided the plans for the proposed building show clearly a compliance with the other provisions of this chapter.

(c) No sales shall be made from such establishment until it has been completed in accordance with said plans and is in conformity with all of the other provisions of this chapter.

Sec. 10-52. Sanitary regulations, immoral conduct, etc.; inspection and report by fire department.

(a) All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with the provisions and regulations governing the condition of premises used for the storage and sale of food for human consumption. It shall be unlawful to permit any disturbance of the peace, obscenity, or public indecency on the premises.

(b) The fire department shall, upon request of the Town Clerk, inspect such premises and report its findings to the Town clerk. All premises licensed hereunder shall conform at all times with all fire regulations of the Town, county and State.

Sec. 10-53. Interior visibility required.

No screen, blind, curtain, partition, signage, article or thing that prevents a clear view into the interior shall be permitted in the window or opening of any door of any retail package store, and no booth, screen, partition or other

obstruction shall be permitted within the interior of any such store. Each such retail store shall be so lighted that the interior of the store is visible day and night.

Sec. 10-54 Lighted electric advertising signs on alcoholic beverage establishments.

No licensee operating premises wherein package sales of alcoholic beverages are sold shall operate lighted electrical signs or devices advertising such beverages except during the hours that such products are being offered for sale to the public.

Secs. 10-55 - 10-69. Reserved.

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Chapter 10 - ALCOHOLIC BEVERAGES

ARTICLE IV. REGULATION OF SALES BY THE DRINK

ARTICLE IV. REGULATION OF SALES BY THE DRINK¹⁰

Sec. 10-70. Licenses.

Any type of consumption on the premises license for alcoholic beverages may be granted only to a restaurant, private club, hotel, or bed and breakfast establishment as defined under section 10-2.

Sec. 10-71. Sale of food.

In order for an establishment to qualify for a pouring license for distilled spirits, malt beverages or wine for consumption on the premises, as a restaurant, private club or restaurant in a hotel, such establishment must have at least 50 percent of its total sales comprised of the sale of food prepared on the premises and nonalcoholic beverages consumed on the premises; and for this purpose, if a restaurant makes a minimum charge, cover charge, or admission charge, or any other non-food or non-alcoholic beverage charge, the amount so charged shall not be counted in computing total sales and shall not be counted as a food or beverage sale.

Sec. 10-72. Standards to determine sleeping or seating capacity; inspections; compliance with fire requirements.

Where a minimum sleeping or seating capacity is prescribed in this chapter, the same shall be judged by existing ordinances of the Town, county or state regulations or by reasonable standards. The fire department, shall, upon request of the Town clerk, inspect such premises and report its findings to the Town clerk. All premises licensed hereunder shall conform at all times to all fire regulations of the Town, county, and state.

Sec. 10-73. Sales outside of licensed premises.

It shall be unlawful for any sale of alcoholic beverages to be made outside of the premises licensed for such sale.

Sec. 10-74. Pricing; happy hour restrictions.

(a) (b) Each licensee shall maintain a schedule of the prices charged for all alcoholic beverages to be served and consumed at each licensed establishment or in any room or part thereof. The schedule of prices shall be posted

or published in a conspicuous manner as to be in view of the paying public, and the schedule shall be effective for not less than one day.

No licensee or employee or agent of a licensee shall:

- (1) Offer or deliver any free alcoholic beverage to any person or group of persons.
- (2) Sell, offer to sell, or deliver to any person or group of persons any alcoholic beverage at a price less than the price regularly charged for such alcoholic beverage during that business day, except at private functions not open to the public.
- (3) Sell, offer to sell, or deliver to any person or group of persons an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public.

10 The sale of Distilled Spirits must be approved by referendum before such sale is authorized in the Town.

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Page 65 of 596(4) Sell, offer to sell, or deliver alcoholic beverages, including malt beverages, by the pitcher, except to two or more persons at any one time or without serving an entree listed on the establishment's regular menu.

- (5) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage during that business day.
 - (6) Encourage or permit at the licensed establishment any game or contest which involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.
 - (7) Issue to any customer any coupon, receipt, ticket or other item purporting to authorize the receipt of any free or reduced-price alcoholic beverage.
 - (8) Sell, offer to sell, or deliver to any patron any alcoholic beverage if said patron has in such patron's possession or control any unconsumed alcoholic beverage.
- (c) No licensee shall advertise or promote in any way, whether within or without the licensed establishment, any of the practices prohibited under subsection (b).
- (d) No provision of this section shall be construed to prohibit licensees from offering free food or entertainment at any time provided all patrons or customers are allowed equal access to such free food or entertainment. No provision of this section shall be construed to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person, or to prohibit any hotel or motel from offering room services to registered guests. No provision of this section shall prohibit a licensee from offering packages in which alcoholic beverages and food or lodging are offered as a unit; provided the value of the alcoholic beverage is established at a uniform level for each package so offered, and the alcoholic beverage delivered as part of the package does not exceed the package allowance, and the tax due on the package allowance is remitted in full to the Town for each package sold.
- (e) No hotel or motel maintaining more than one licensed establishment upon its premises shall allow the promotion of one of its licensed establishments over another on the basis of prices for alcoholic beverages.

(f) For the purposes of this section, "business day" shall mean that period running from 8:00 a.m. until 12:00 midnight, Monday through Sunday.

Sec. 10-75. Hotel in-room service.

Consumption on premise licenses obtained by hotels shall include the right to serve alcoholic beverages by the drink to registered guests in their hotel rooms as well as to deliver alcoholic beverages in unbroken packages to registered guests' rooms when such beverages have been ordered by such guests and/or to provide a cabinet or other facility in a hotel guest's room which contains alcoholic beverages for which the establishment is licensed, and which is accessible by lock and key only to the guest, and for which the sale of the alcoholic beverages contained therein is final at the time requested, except for a credit which may be given to the guest for any unused and unopened portion. All alcoholic beverages sold or distributed under this section shall be obtained by the hotel directly from a licensed wholesaler or distributor and shall be stored on the premises of the hotel until sold or served.

Sec. 10-76. Maintenance of premises; improper conduct.

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

(b) No licensee for consumption on the premises shall permit any disturbance of the peace, obscenity or public indecency on the licensed premises, including on grounds outside the building under the control of the licensee.

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Page 66 of 596 **Sec. 10-77. Reports of sales to be made quarterly, suspension, revocation.**

(a) Licensees shall, within thirty (30) days following the end of each quarter, file with the Town clerk a report sworn to by the licensee, setting forth gross sales of licensee for each month during the quarter being reported, sales of food and non-alcoholic beverages, and sales of alcoholic beverages.

(b) Should the total sales from food and non-alcoholic beverages reported by any licensee for consumption on the premises not exceed those from the sale of all alcoholic beverages as required by this chapter for any two monthly periods, the license may be suspended or revoked by the mayor and council after a hearing as provided for in section 10-100.

Sec. 10-78. Additional certification.

In addition to the reporting requirements detailed in section 10-77, the Town clerk may require that licensee furnish a statement from a certified public accountant that reports the percentage of the licensee's total sales derived from the sale of food and non-alcoholic beverages sold on the premises compared to the sale of all alcoholic beverages sold on the premises in the licensee's most recent reporting period.

Sec. 10-79. Areas of sales.

(a) All restaurants and private club eating areas, including all tables, booths, and other areas where customers are

served and including all passageways for customers, shall be sufficiently well illuminated so that those inside the premises may view them.

(b) The sale of alcoholic beverages in any back room or side room that is not open to the general public is prohibited, except that this prohibition shall not apply with respect to:

- (1) Private parties that have been scheduled in advance;
- (2) Room service to hotel guests in their hotel rooms, provided a properly licensed restaurant is located on the premises; and
- (3) Private clubs otherwise meeting the standards of subsection (a).

Sec. 10-80. Dancing on the premises.

Patron dancing shall be permitted at facilities licensed for consumption on the premises sales only where:

- (1) Adequate space exists;
- (2) All fire and safety regulations are met; and
- (3) Capacity limitations on the premises are not exceeded.

Sec. 10-81. Consumption on the premises, only.

(a) All distilled spirits, malt beverages or wine sold by the drink for consumption on the premises shall be consumed only on the licensed premises. It shall be unlawful for any person to remove from the licensed premises any alcoholic beverages sold for consumption on the premises. Each licensee shall be responsible for ensuring that no person knowingly removes any alcoholic beverages from the premises in any type of container.

(b) Each consumption on the premises licensee shall post in a prominent place at each exit from the licensed premises a sign in substantially the following form: "It is a violation of Town ordinance to take any type alcoholic beverage from this outlet". Such sign shall be uniform letters not less than one inch in height.

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Sec. 10-82. Exterior advertisement of alcoholic beverages.

No advertising of alcoholic beverages shall be published or disseminated in the Town which:

- (1) Contains any statement, design, or partial representation that falsely implies that the product has been endorsed, made, or used by, or provided for, or under the supervision of or in association with the specifications of any religious organization, the Town, or any other local governmental entity.
- (2) Contains any reference, directly or indirectly, which falsely implies an endorsement by, or relationship with, any school, college or university.
- (3) Is directed to, or promotes in any way, the sale of alcoholic beverages to, persons under the legal age to purchase alcoholic beverages in the State of Georgia.

Sec. 10-83. Lighted electric advertising signs on distilled spirits, wine or malt beverage establishments.

No licensee operating premises wherein distilled spirits, wine or malt beverages are sold by the drink shall operate lighted electrical signs or devices advertising such beverages except during the hours that such products are being offered for sale to the public.

Sec. 10-84.

Sec. 10-85. Brown bagging, brown bag establishments.

"Brown bagging" and "brown bag establishments" as defined in sec. 10-2 of this chapter shall be permitted within the Town of Carl, subject to the following conditions:

- (1) The establishment meets the definition of a restaurant or private club.
- (2) The hours during which brown bagging is allowed conform to and do not exceed the hours during which the sale of alcoholic beverages for consumption on the premises is legal in the Town.
- (3) The owner of the brown bagging establishment has first passed a background check and secured a Town permit allowing brown bagging.
- (4) All alcoholic beverages shall be brought into the establishment at the time of their use by the patron and shall be removed in their entirety by the patron when that patron leaves the establishment.
- (5) No storage of alcoholic beverages on the premises shall be permitted under any circumstances.
- (6) The allowance of brown bagging is limited to the patrons sharing a meal with the patron who brought the alcoholic beverage into the establishment; no sharing of alcoholic beverages among tables and patrons not included within the initial patron's party shall be permitted.
- (7) The owner of the establishment remains responsible for the maintenance of good order on the premises.

Sec. 10-86. Lounges, bars prohibited.

"Lounges" or "bars" are prohibited within the Town of Carl; provided that lounges and/or bars attached to a restaurant licensed for the sale of alcoholic beverages for consumption on the premises are permitted (including those within hotels) as long as the total receipts for food and beverages of the restaurant and lounge are added together and the combined receipts show at least 50 percent of the revenue of the combined usage is derived from the sale of food and non-alcoholic beverages consumed on the premises, and provided further that the hours of operation of the lounge or bar do not exceed the hours of operation of the attached restaurant.

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Sec. 10-87. Brew pubs.

Brew pubs meeting the standards of O.C.G.A., Section 3-5-36, as well as meeting the definition of a restaurant under this chapter may be licensed in the Town as a restaurant and shall be subject to all regulations and requirements of restaurants.

Sec. 10-88. Alcoholic beverage handling.

It shall be the responsibility of the licensee or license representative to acquaint all employees engaged in the sale or service of alcoholic beverages with the requirements of this chapter and state law regulating the handling,

selling, serving, delivering, dispensing or taking orders for alcoholic beverages. All servers of alcoholic beverages shall have a properly issued work permit as required in section 10-45, Employee regulations, supra.

Secs. 10-89—10-99. Reserved.

***ARTICLE V. SUSPENSION, REVOCATION AND PROBATION LICENSES;
DUE PROCESS; HEARING***

Sec. 10-100. Grounds for suspension, revocation or probation.

(a) Any license that has been issued by the Town may be suspended, revoked, or placed on probation for due cause as hereinafter defined. "Due cause," for purposes of this section shall include, but not be limited to:

(1) (2) (3) (4) (5) (6) (7) (b) Conviction (to include a plea of guilty or nolo contendere) by local, state or federal authorities of the licensee or license representative for any felony, or any misdemeanor involving moral turpitude, or any law, regulation or ordinance involving alcohol beverages, gambling, or tax law violations, including but not limited to those enumerated in section 10-23 (d), supra;

Conviction (to include a plea of guilty or nolo contendere) by local, state or federal authorities of any employee of the licensee for violation of any law or ordinance regulating alcoholic beverages, including but not limited to, violation by such employee of any of the standards of this chapter;

Any violation of this chapter upon the licensed premises or by persons acting on behalf of the licensed premises with respect to the violation;

Suspension or revocation of any state license required as condition for the possession, sale or distribution of beverage alcohol;

Material falsification of any fact given in application for a license issued under this chapter or bearing upon the licensee's qualification therefor, or any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this chapter;

The licensed business fails to properly account for, file, report and/or maintain any records and/or remit or pay any renewal license fee imposed, sales taxes, or excise taxes required under the Town ordinances.

Conduct of the licensed business in such a manner as to require excessive police monitoring or response to preserve the public order and secure compliance with federal, state and local laws and ordinances regulating alcoholic beverages.

With respect to this section, it shall be presumed that the act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aide in such occurrence, or in the exercise of due diligence could not have discovered or prevented such activity.

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Page 69 of 596**Sec. 10-101. Notice of hearing; hearing; appeal.**

(a) (b) (c) (d) Action to suspend, revoke, or place a license on probation shall be commenced by the Town clerk making

written recommendation to the mayor and Town council and giving written notice to the licensee, either by certified mail, return receipt requested, or by personal service upon licensee or his/her agent at the licensed location, stating the grounds therefor, and the date, time and place such matter will be heard by the mayor and Town council. Notice shall be served at least ten days prior to the date of the hearing. Included in the notice shall be an advisement of the licensee's right to be heard before the council. Any licensee requiring subpoenas to compel the attendance of Town witnesses or documents at the hearing shall file a written request with the Town clerk at least five days prior to the hearing. Hearings may be continued for good cause only.

Hearings shall only be as formal as necessary to preserve order and shall be compatible with the principles of justice. The Town attorney or his/her designee shall present the Town's case and shall bear the burden of proving by a preponderance of the evidence that due cause exists to suspend, revoke or probate the license.

The licensee may be represented by legal counsel, may confront and cross-examine witnesses, and shall have the right to call witnesses and present evidence in his/her behalf. A hearing record shall be maintained by the Town; however, either party may arrange for transcription by a court reporter at his/her sole expense. Hearings shall be presided over by the mayor who shall preserve order and rule upon all matters of evidence. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

All final decisions to suspend, revoke, or place a licensee on probation shall be made by the mayor and Town council, in writing, with the reasons therefore stated. Notice of a final decision shall be given the licensee within three business days following the date of the hearing.

Appeals from an action by the mayor and Town council to revoke, suspend or probate a license pursuant to this chapter shall be by writ of certiorari to the Superior Court of Barrow County.

Secs. 10-102—10-109. Reserved.

ARTICLE VI. TAXATION OF WHOLESALERS

Sec. 10-110. Imposition of excise tax on wholesalers.

(a) There is hereby levied an excise tax upon wholesalers of alcoholic beverages in accordance with the following:

(1) (2) (3) (4) (5) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15 ½ gallons and a proportionate tax at the same rate on all fractional parts of 15 ½ gallons.

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

On the first sale of wine sold within the Town at the rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter; provided that no excess tax shall be charged for wine sold pursuant to an exemption as contained in O.C.G.A., Section 3-6-70.

On the sale of distilled spirits to private clubs, a tax at the rate of twenty-two center (\$0.22) per liter of distilled spirits and a proportionate tax at the same rate on all fractional parts of a liter.

On the sale of distilled spirits by the package by licensed retail package dealers, a tax at the rate of twenty-two cents (\$0.22) per liter of distilled spirits, excluding fortified wine, and a proportionate tax at the same rate on all fractional parts of a liter.

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Page 70 of 596(b) (c) (d) (e) Each wholesale dealer selling malt beverages and wine within the corporate limits and each wholesale dealer selling distilled spirits within the corporate limits of the Town shall file a report by the tenth day of each month showing for the preceding calendar month the exact quantities of malt beverages, wine, and distilled spirits, by size and type of container, constituting a beginning and ending inventory for the month, sold within the corporate limits. Each wholesale dealer shall remit to the Town on the tenth day for the month succeeding the calendar month in which such sales were made, the amount of excise tax due in accordance with the section. Each brew pub licensed by the Town shall likewise be responsible for reporting on the quantity of malt beverages produced and sold and shall be responsible for remitting the tax due the Town on the same basis as wholesale dealers pursuant to O.C.G.A., Section 3-5-37.

No decal, stamp or other identifying marking shall be required on malt beverages sold within the corporate limits designating a particular municipality or county.

The excise taxes provided for in this section shall be in addition to any license fee, occupation tax or other charge which may now or in the future be imposed upon the business of selling alcoholic beverages, at retail or wholesale, within the Town and shall likewise be in addition to any licensee fees for private clubs.

The failure to make a timely report and remittance shall render a wholesale dealer liable for a penalty of ten percent (10%) of the total amount due during the first 30-day period following the date such report and remittance were due and a further penalty of ten percent (10%) of the amount of such remittance for each successive 30-day period, or any portion thereof, during which such report and remittance are not filed. The filing of a false or fraudulent report shall render the wholesale dealer making such report liable for a penalty equal to 50 percent of the amount of the remittance that would be required under an accurate and truthful report.

(Ord. No. 11-16-2023, The Code of the Town of Carl, Georgia 1991, Chapter 4 Art. I)

Secs. 10-111—10-119. Reserved

ARTICLE VII. TAXATION OF BEVERAGES BY THE DRINK¹¹

Sec. 10-120. Excise tax imposed.

(a) There is hereby imposed on the sale of distilled spirits by the drink an excise tax at the rate of three percent of the charge to the public for each such drink. The tax is imposed upon and shall be paid by the retail consumption dealer in accordance with the procedures adopted by this article.

(b) In determining the base upon which the rate of tax is imposed, the consideration received for the sale of distilled spirits by the drink is valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction there from whatsoever.

Sec. 10-121. Collection of tax; information to Town.

Every licensee or his/her agent is hereby authorized and directed to collect the tax herein imposed from purchasers of distilled spirits sold by the drink within his/her licensed premises. Such licensee or his/her agent shall furnish such information as may be requested by the Town to facilitate the collection of this tax.

11 The sale of Distilled Spirits must be approved by referendum before such sale is authorized in the Town.

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Page 71 of 596 **Sec. 10-122. Payment of tax by licensee; collection fee.**

(a) Due date of taxes. All taxes collected by any licensee or agent hereunder shall be due and payable to the Town on or before the tenth (10th) day of every month next succeeding each respective monthly period as set forth herein.

(b) Return; time of filing; persons required to file; execution. On or before the tenth (10th) day of the month following each monthly period, a return for the preceding monthly period shall be filed with the Town clerk of the Town, in such form as the Town may prescribe, by every licensee or agent liable for the payment of tax hereunder.

(c) Delivery of return and remittance. The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the Town clerk.

(d) Collection fee allowed licensees or agents. Licensees or agents collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if said amount is not delinquent at the time of payment. The rate of deduction shall be the same under the Georgia Retailers' and Consumers' Sales and Use Tax Act, approved February 20, 1951 (Ga. Laws, p. 360), as now or hereafter amended.

Sec. 10-123. Deficiency determinations.

(a) *Re-computation of tax; authority to make; basis of re-computation.* If the Town clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the Town of TOWN OF CARL by any licensee, the Town clerk may compute and determine the amount required to be paid upon the basis of any information within his/her possession or that may come into his/her possession One or more than one deficiency determination may be made of the amount due for one, or more than one, monthly period.

(b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent (1%) per month, or fraction thereof, from the twentieth day after the close of the monthly period for which the amount of any portion thereof should have been returned, until the date of payment.

(c) *Offsetting of overpayments.* In making a determination, the Town clerk may offset overpayments for a period

or periods, against underpayments; for another period or periods, against underpayments; for another period or periods, against penalties; and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in subsection (b) hereof.

(d) *Penalty; negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to gross negligence or disregard of rules and regulations, a penalty of 15 percent of the amount of such deficiency shall be added thereto.

(e) *Penalty for fraud or intent to evade.* If any part of the deficiency determination has been made is due to fraud or an intent to evade any provision of this article or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto and shall be in addition to the 15 percent penalty provided in subsection (d) hereof.

(f) *Notice of Town clerk's determination; service of.* The Town clerk, or his/her designated representative, shall give to the licensee written notice of his/her determination. The notice may be served personally or by mail. If by mail, such service shall be addressed to the licensee at his/her address as it appears in the records of the Town clerk of the Town. In the case of service by mail of any notice required by this article, the service is complete at the time of deposit in the United States Post Office with adequate postage affixed thereto.

(g) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this article or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

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Page 72 of 596 **Sec. 10-124. Determination if no return made.**

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

Manner of computation; offsets; interest. In making a determination, the Town clerk may offset overpayments for a period or periods against the interest, penalties or underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) hereof.

Interest on amount found due. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the twentieth day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of

payment.

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

Giving of notice; manner of service. Promptly after making his/her determination, the Town clerk shall give to the licensee written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 10-125. Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax herein imposed to the Town or fails to pay any amount of such tax required to be collected and paid to the Town within the time required, shall pay a penalty in the amount of 15 percent of the tax plus interest on the unpaid tax or any portion thereof as set forth in section 10-123 and 124 hereof.

Sec. 10-126. Administration; enforcement; rules; records; confidentiality of reports.

(a) (b) (c) (d) (e) *Authority of the Town clerk.* The Town clerk shall administer and enforce the provisions of this article and article VI for the levy and collection of the tax imposed by this chapter.

Rules and regulations. The Town clerk shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this chapter or other laws of the Town and the State of Georgia, or the constitution of this state or the United States for the administration and enforcement of the provisions of articles VI and VII and the collection of the taxes hereunder.

Records required from licensee; form. Every licensee for the sale of alcoholic beverages by the drink in the Town shall keep such records, receipts, invoices and other pertinent papers in such form as the Town clerk may require.

Examination of records; audits. The Town Clerk or any auditor, attorney, or CPA authorized in writing by the Town may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

Authority to require reports; contents. In the administration of the provisions of this article, the Town clerk may require the filing of reports by any person or class of persons having in such person's or persons' possession or custody information relating to the sales of alcoholic beverages which are subject to the tax. The

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Page 73 of 596 reports shall be filed with the Town clerk and shall set forth the price charged for each sale, the date or dates of such sales, and such information as the Town clerk may require.

Secs. 10-127—10-139. Reserved.

ARTICLE VIII. VIOLATIONS

Sec. 10-140. Violations prohibited.

No person shall violate any of the provisions of this chapter or assist another in evading or avoiding the licensing requirements, violating regulatory standards or participate in the non-payment of the taxes and fees imposed by this chapter.

Sec. 10-141. Penalties.

(a) Any person knowingly violating any provision of this chapter shall be guilty of an offense against the Town, punishable upon conviction in the Municipal Court by a fine not to exceed \$1,000.00, imprisonment not to exceed six months, or both.

(b) In addition to such penalty, any violation of this chapter by a licensee or such licensee's agents or employees, may result in suspension, revocation or probation of the license.

Chapter 14 ANIMALS¹²

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. REGULATIONS

Sec. 14-19. Dead animals.

It shall be the duty of the owner or person responsible for any dead animal in the Town to remove or dispose of the same in a sanitary and inoffensive manner within 24 hours of learning of such dead animal. If not removed within said time, the Town may remove the animal and charge the costs thereof against the owner or person responsible.

State law reference(s)—Disposal of dead animals, O.C.G.A. § 45-5-5.

Ord. Animal Owner's Responsibility Resolution dated October 8, 1991.

¹²State law reference(s)—Game and Fish Code, O.C.G.A. § 27-1-1 et seq.; control of rabies, O.C.G.A. § 31-19-1 et seq.

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Page 74 of 596**Sec. 14-20. Bird sanctuary.**

(a) (b) The entire area embraced within the corporate limits of the Town is hereby designated as a bird sanctuary.

It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wildfowl or to rob bird's nest or waterfowl's nest.

Sec. 14-21. Protection of small wild game.

(a) It shall be unlawful for any person to shoot, trap, snare, destroy, molest or keep in confinement within the Town limits any small wild game such as rabbits and squirrels, the only exception being predatory animals destroying property.

Sec. 14-22. Keeping; grazing near buildings.

It shall be unlawful for any person to keep or maintain any pen, coop or enclosure for animals or fowl, or to permit any animal or fowl to be kept, maintained or grazed, within 250 feet of any house or building where people reside or work. This section shall not apply to any house or building on the same premises where such animal or fowl is kept or maintained, nor shall it apply to dogs or cats as household pets, but it shall apply to dog kennels, where more than three dogs are kept.

Sec. 14-23. Keeping poultry.

- (a) Any resident of the Town may raise and maintain one flock of poultry, not to exceed in number a total of 30 birds, within the Town limits, composed of any type of poultry, except guinea fowls, provided the flock is maintained on the premises of the resident and in accordance with the distance requirements of section 14-22. Guinea fowls are expressly prohibited since the characteristics and frequency of their call creates a constant and generally annoying disturbance throughout the entire neighborhood.
- (b) Any resident maintaining a flock of poultry, as set forth in subsection (a) of this section, shall provide suitable housing facilities, hereinafter referred to as the poultry house, and the flock shall not be released from the poultry house except and unless a "run" is provided and fenced and connected to the poultry house in such a manner as will not permit the fowls to have free range over the entire premises of the owner, but in such a manner as will restrict the entire flock to the confines of the poultry run and house at all times.
- (c) A clean and sanitary condition shall be strictly maintained at all times and the poultry house and run opened for inspection by duly authorized members of the police or county health personnel. Failure on the part of the owner to maintain clean and sanitary conditions in and around the poultry house and run, or failure to open such facilities promptly for inspections shall constitute a violation of this article.
- (d) Should one or more birds of the flock become injured or killed or cause damage or injury to the person or property of others while outside of the confines of the poultry house or run maintained by the owner for their confinement, the responsibility thereof shall rest solely and entirely with the owner of the flock since the owner is charged herein with the responsibility of keeping his or her flock of poultry within the confines of the poultry house or run at all times.

Sec. 14-24. Keeping rabbits and guinea pigs.

- (a) Any resident of the Town may raise and maintain rabbits and guinea pigs, not to exceed in number a total of 30 animals within the Town limits, provided they are maintained on the premises of the resident in accordance with the provisions of section 14-22.
- (b) Any resident maintaining rabbits or guinea pigs, as set forth in subsection (a) of this section, shall provide hutches or pens built up at least two feet from the ground, and the animals shall not be released from said
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Page 75 of 596(c) hutches or pens at any time. At no time shall the animals be released from the hutches or pens or turned loose on the ground even though the hutches or pens are maintained within a fenced-in enclosure.

The same conditions as set forth in section 14-23(c) and (d) regarding sanitary conditions, and the owner's responsibilities, shall apply to the owners of rabbits and/or guinea pigs exactly the same as it does to the owners of poultry.

Sec. 14-25. Reserved.

Sec. 14-26. Livestock kept in violation of article.

Any person housing, supporting or maintaining livestock, farm animals, poultry or fowl not expressly authorized in the foregoing sections shall be adjudged in violation of this article and, upon conviction thereof shall be punished as provided in section 1-9.

Secs. 14-27—14-55. Reserved.

ARTICLE III. ANIMAL CONTROL¹³

Sec. 14-56. Short title.

This article shall be known and may be cited as the "Animal Control Ordinance of the Town of Carl, Georgia."

Sec. 14-57. Definitions.

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

Abandoned animal means any domesticated animal shall be considered abandoned, for the purposes of this article, which shall have been placed upon public property or within a public building unattended or uncared for, or upon or within the private property of another without the express permission of the owner, custodian or tenant of the private property and is unattended or uncared for. Any domesticated animal shall also be considered as abandoned, for the purposes of this article, which shall have been upon or within the property of the owner or custodian of this animal for a period of time in excess of 36 hours unattended and without proper food and water.

Abused animal means any animal which is mistreated, beaten, tormented or teased, or is deprived of water, food or shelter, or is kept under unsanitary conditions, or is abandoned, or is trained for fighting other animals.

Animal at large means an animal not under restraint.

Animal control center means the facility designated by the county board of commissioners for the detention of animals.

Animal control officer means any person designated by the county animal control director to perform the duties prescribed by this article or imposed by local ordinance, and any police officer of the Town.

Animal under restraint means any animal humanely secured by a leash or lead or enclosed by way of fence or other enclosure or the animal is confined within a vehicle, parked or in motion.

¹³State law reference(s)—Animal control, Ga. Const. art. IX, § II, ¶ (a)(3); Georgia Animal Protection Act, O.C.G.A. § 4-11-1 et seq.; local authority to enact ordinances not in conflict with Georgia Animal Protection Act, O.C.G.A. § 4-11-18.

Page 76 of 596 *Companion animal* means a domesticated animal kept for pleasure rather than utility. Pets include, but are not limited to, birds, cats, dogs, hamsters, horses, mice, reptiles, domesticated wild animals, exotic animals and other animals associated with man's environment.

Dangerous animals means any animal which constitutes a physical threat to human beings or other domestic animals by virtue of a known propensity to endanger life by an unprovoked assault or bite so as to cause serious bodily harm. An animal trained, owned or harbored for the purpose primarily or in part, of animal fighting.

Exceptions: An animal shall not be deemed dangerous if:

(1) It bites, attacks or menaces:

- a. Anyone assaulting the owner;
- b. A trespasser on the property of the owner; or
- c. Any person or other animal who has tormented or abused it;

(2) It is otherwise acting in defense of an attack from a person or other animal upon the owner or other person; or

(3) It is protecting or defending its young or other animal.

Director means the county animal control director.

Domesticated animals means animals that are accustomed to live in or about the habitation of men including, but not limited to, cats, cows, dogs, fowl, horses, swine, domesticated wild animals and/or exotic animals. This definition only applies to those animals mentioned herein and is only applicable to this article, and in no way affects the meaning or application of a definition of the described animal, as may be found in any other Town ordinances.

Guard dog means any dog which has been trained to attack persons independently or upon oral command and any dog which, while not so trained, is reasonably expected to perform as a guardian of its owner and/or upon and within which he or she is located.

Owner means any person owning, keeping, harboring or acting as custodian of a domesticated animal.

Public nuisance means any animal which:

- (1) Is found at large in violation of sections 14-60, 14-61 and 14-62.
- (2) Is unlicensed (unregistered) in violation of section 14-63.
- (3) Is trained, owned or harbored for the purpose, primarily or in part, of dog fighting.
- (4) Is dangerous, as defined, and is not restrained or confined, as provided for in sections 14-61 and 14-62.
- (5) Produces, because of quantity, manner or method in which the animals are domesticated or maintained, unsanitary conditions in the Town.
- (6) Is inimical to the public health, welfare or safety according to the rules and regulations promulgated by the board of health, which rules and regulations are incorporated herein and made a part hereof as if fully set out in this article; is hereby declared to be a public nuisance and any person that knowingly keeps, owns, harbors or acts as custodian of an animal constituting this nuisance shall be guilty of an unlawful act and shall be punishable as hereinafter provided.

(Code 1987, § 9-3-22; Ord. of 8-10-1987, §§ 1—5)

State law reference(s)—Definitions, O.C.G.A. § 4-11-2.

Sec. 14-58. Penalties for violation and repeat offenders.

Any person violating the terms of this article or rules and regulations promulgated pursuant thereto shall be punished pursuant to section 1-9.

(Code 1987, § 9-3-35; Ord. No. 107, 5-9-1983; Ord. of 8-10-1987, § 12)

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Page 77 of 596**Sec. 14-59. Animal control center.**

There is hereby recognized the county animal control center, which is under the supervision the director and is staffed with such personnel as may, from time to time, be authorized in the county budget and appropriations.

Sec. 14-60. Running at large prohibited.

It shall be unlawful for the owner of any animal, or anyone having an animal in his or her custody, to allow it to run at large unattended on or about the streets and highways of the incorporated limits of the Town; or on the property of another person, without permission of the owner of that property, or of the person in possession of that property, except dogs being hunted in accordance with state game and fish department laws, rules and regulations. Failure to comply with this section shall be unlawful and shall be punishable as hereinafter provided.

Sec. 14-61. Duty of all animal owners to be responsible owners.

It shall be the duty of every owner of any animal, or anyone having any animal in his or her possession or custody, to exercise reasonable care and to take all necessary steps and precautions to protect other people, property, and animals from injuries or damage which might result from their animals regardless of whether such behavior is motivated by mischievousness, playfulness or ferocity.

Sec. 14-62. Duty to keep animal under restraint while on property.

It shall be the duty of the owner of any animal or anyone having an animal in his or her possession or custody, to ensure that the animal is kept under restraint and that reasonable care and precautions are taken to prevent the animal from leaving, while unattended, the real property limits of its owner, possessor or custodian, and that:

- (1) It is securely and humanely enclosed within a house, building, fence, pen or other enclosure out of which it cannot climb, dig, jump or otherwise escape on its own volition; and such enclosure must be securely locked at any time the animal is left unattended.
- (2) It is on a leash or under the control of a competent person, or is off leash and obedient to that person's command and that person is present with the animal any time it is not restrained as provided for in subsection (1) of this section while on owner's property.
- (3) It shall be the duty of the owner of any animal or anyone having an animal in their possession to keep the animal under restraint at all times while the animal is off the real property limits of the owner, possessor or custodian. For the purposes of this section, an animal is deemed under restraint when it is

confined within a vehicle, parked or in motion, is secured by a leash or other device held by a competent person, is within the boundaries of a designated dog park under voice command of a competent person and such person is present with the animal, or the animal is properly confined within an enclosure with the permission of the owner of the property where the enclosure is located.

(4) Animal under restraint means any animal secured by a leash or lead or enclosed by way of fence or other enclosure or the animal confined within a vehicle, parked or in motion.

(5) The term "dog park" means an area within a Town-owned park designated by signs, fencing or other appropriate boundaries as a free-run area for dogs when the dog is under the control of a responsible and competent person and obedient to that person's commands and such person is present with the animal.

(6) Additional requirements for precautions to be taken by owners of dangerous animals:

a. Whenever outside of its enclosure as provided for in subsection (1) of this section, but on the owner's property, a dangerous dog must be attended by the owner and restrained by a secure collar and leash of sufficient strength to prevent escape.

b. No dangerous animal shall be chained, tethered, or otherwise tied to any inanimate object such as a tree, post, building, outside of its own enclosure as provided for in subsection (1) of this section.

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Page 78 of 596c. In addition to the requirements in subsection (1) of this section, for owners of dangerous animals who maintain their animals out-of-doors, a portion of their property should be fenced with a perimeter of area fence. Within this perimeter fence, the dangerous animal must be humanely confined inside a pen or kennel of adequate size. The pen or kennel may not share common fencing with the area of perimeter fence. The kennel or pen must have secure sides; a secure top attached to all sides; the sides must either be buried two feet into the ground, sunken into a concrete pad, or securely attached to a wire bottom. The gate to the kennel must be locked.

Failure to keep any animal confined or under constraint as provided for in this section shall be unlawful and shall be punishable as hereinafter provided.

Sec. 14-63. Duty to keep animal under restraint while off property.

(a) It shall be the duty of the owner of any animal or anyone having an animal in his or her possession to keep the animal under restraint and control at all times while the animal is off the real property of the owners, possessor or custodian.

(b) For the purposes of this section, an animal is deemed under control when:

(1) It is securely confined with a vehicle, parked or in motion;

(2) It is properly confined within a secure enclosure with the permission of the owner of the property where the enclosure is located; or

(3) It is securely restrained by a leash or other device held by a competent person.

(c) Additional requirements for precautions to be taken by owners of dangerous animals: Except when being

transported in, and securely confined within, a vehicle, no dangerous animal shall be permitted off the property of his or her owner except when it is:

- (1) Attended by his or her owner;
 - (2) Is restrained by secure collar and leash (not to exceed six feet in length); both collar and leash to be of sufficient strength to prevent escape; and
 - (3) Muzzled by any means sufficient to prevent biting other persons or domestic animals.
- (d) Failure to keep animal under restraint or control as provided for in this section shall be unlawful and shall be punishable as hereinafter provided.

Sec. 14-64. When collar and tag required; dog.

It shall be the duty of each dog owner, possessor or custodian thereof, to provide a collar for his or her dog to which the county owner's permit and the rabies inoculation tag shall be attached. The collar, together with the permit and tag, shall be worn by the dog at all times, except as otherwise provided in section 14-63. Failure to comply with this section shall be unlawful and shall be punishable as hereinafter provided.

Sec. 14-65. Enforcement.

(a) Upon information made known to or complaint logged with any officer of the Town police department, that any owner, possessor or custodian of any dog or animal is in violation of this article, he or she or his or her authorized representative shall cause a summons to be issued requiring the owner, possessor or custodian of his or her dog or animal to appear before a judge of the municipal court of the Town on a day and time certain then and there to stand trial for the violation of this article. If a violation of this article has not been personally witnessed by any officer of the Town police department, a subpoena shall be issued to the person making the complaint, to be and appear on the day and time set for trial, then and there to testify on behalf of the Town.

Any officer of the Town police department will refuse to respond to anonymous complaints.

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Page 79 of 596(b) In the event that the owner, possessor or custodian of any dog or animal is not known and this dog or animal is upon the public streets, alleys, sidewalks, school ground or other public places or premises or the property of another without that property owner's permission as prohibited by this article, upon complaint made to or information made known to the Town the animal may be impounded by the Barrow County animal control after a period of 72 hours.

(Code 1987, § 9-3-29; Ord. No. 107, 5-9-1983; Ord. of 4-9-1984)

Sec. 14-66. Vaccinations for rabies, dogs and cats.

All dogs and cats in the incorporated limits of the Town shall be inoculated for the prevention of rabies by a licensed veterinarian in accordance with the applicable rabies control ordinance of the county, as amended.

Sec. 14-67. Warning signs; guard dogs and dangerous dogs.

All owners, keepers or harborers of any guard dog or dangerous dog shall display in a prominent place on their

premises, and at each entrance or exit to the area where such dog is confined, a sign easily readable by the public using the words "Beware of Dog."

Sec. 14-68. Abandonment or abuse of animals.

It shall be unlawful for anyone to knowingly abandon or abuse any domesticated animal within the Town.

Each person who knowingly abandons or abuses, or willingly permits such abandonment or abuse, or aids in the abandonment or abuse of any domesticated animal shall be in violation of the law shall be punished as hereinafter provided. Each offense shall be punished with a fine of the maximum amount allowable by law.

Sec. 14-69. Cleaning up after pets; penalty for violation.

(a) Any person owning, keeping, possessing, or harboring any dog or cat shall promptly remove and dispose of all feces left by the dog or cat on any public property and on any private property not owned by such person or lawfully occupied by such person.

(b) Any person violating any provision of this article shall be punished pursuant to section 1-9 for each offense.

Sec. 14-70. Animal enforcement by the county.

(a) Except as otherwise in conflict with provisions of this article, the Town hereby adopts the county animal control code.

(b) The county will retain all fees collected in accordance with the animal control code.

(Code 1987, § 9-3-37)

Chapter 18 BUILDING CODE¹⁴

ARTICLE I. IN GENERAL

¹⁴State law reference(s)—Local code enforcement board or system, O.C.G.A. § 36-74-3; enforcement boards created after January 1, 2003, O.C.G.A. § 36-74-20 et seq., enforcement boards created prior to January 1, 2003, O.C.G.A. § 36-74-40 et seq.; state technical codes, O.C.G.A. § 8-2-20 et seq.

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Page 80 of 596**Sec. 18-1. Definitions.**

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

Commissioners or board. Wherever the terms "commissioners" or "board" appear in such codes, the same shall read "Town council."

County. Wherever the term "county" appears in the technical building and construction codes adopted by reference under this chapter, the same shall read "Town."

New construction, as referred to in this chapter, means a structure constructed from the ground up.

Renovation, as referred to in this chapter, means a permanent structure that is being altered significantly, to make new again.

Sec. 18-2. Technical codes adopted by reference.

All building codes of Barrow County, Georgia are adopted by reference for the Town, with the exception of rules explicitly addressed herein. The Unified Development Codes (**Barrow County, Georgia – Code of Ordinances / Chapter 89**) are hereby adopted by reference for the Town of Carl, Georgia, as they exist on November 16, 2023, and as they may be amended by Barrow County from time to time except for rules explicitly addressed herein.

A copy of the Barrow County Code of Ordinances is attached as Appendix B for reference only.

Sec. 18-3. Copies on file.

All codes enforceable by the Town shall be kept on file in the office of the Town clerk where they shall be available for public inspection.

Sec. 18-4. Conflict of laws.

Where such building, plumbing, heating and electrical code is in conflict with the provisions of any other ordinance of the Town or any state law, the provisions of such code or the state law shall prevail.

Sec. 18-5. Building permits and certificates of occupancy.

(a) No new construction, or renovations shall be made without first obtaining a building permit from the Town.

The Town clerk will issue permits for all new construction or renovations, only after approval and signature of the mayor or the mayors' duly agent using the requirements below. Upon completion, no person shall occupy a new construction or renovation without first obtaining an occupancy permit from the Town. The Town clerk shall issue occupancy permits from the Town, only after the Town's final occupancy approval. No building permit or occupancy permit shall be issued by the Town unless all building ordinances as adopted by the Town and the county have been fully complied with.

(b) The following regulations apply to both new construction and renovations:

(1) The basic building permit fee is \$100.00 plus an administration fee, calculated as follows:

- a. For replacing, improving, modifying or increasing buildings that are currently being taxed, the administration fee will be calculated as 0.4 percent of the good faith estimated costs of renovation.
- b. For new buildings, the administration fee will be calculated as 0.8 percent of sold price. Said construction will require a \$1,000.00 deposit per unit before construction and the balance due to the Town or to the developer will be reconciled upon closing.

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Page 81 of 596(2) (3) (4) (5) c. Upon approval of all final inspections, a certificate of occupancy will be issued for a fee of \$75.00.

Occupancy of any new or renovated structure without a certificate is prohibited.

All applications for building permits must include the following:

- a. To-scale site plan showing dimensions of all side boundaries and major trees six inches and over in diameter that will be removed and showing all setbacks and proposed construction; plus existing and proposed structures.
- b. 1. All new business construction will include pedestrian access via sidewalks or approved trails. All

builders will provide pedestrian trails in accordance with accessibility requirements under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968.

2. Sidewalks or trails will interconnect businesses.

3. Sidewalks or trails will be a minimum of 60 inches wide, will be at a grade less than eight degrees except where prohibited by topography, and will not include turns with a radius less than four feet.

4. Sidewalks or trails will allow access to the street in at least one place along the property line.

c. 1. All new construction along the corridors zoned as professional or commercial business will include proper curbing to separate the pedestrian areas from vehicular traffic.

2. Curbing will be constructed along the roadway and may include an entrance lane arc.

3. Curbing may be constructed by concrete or stone.

4. Curbing will be a minimum of four inches wide and six inches above roadbed.

d. Silt control and drainage plan. Silt control and drainage measures will be in place prior to construction and maintained throughout project. On completion of project, lawn must be sodded, seeded or have other means of ground cover for erosion prevention; and

e. A signed waiver that builder is responsible for all damage to Town property such as curbing, sidewalks and streets and shall be repaired to the original state.

If county inspections are required, all county inspections must be made and approved by the county.

Upon completion of construction a Town certificate of occupancy is required after all of the above requirements have been met. No occupancy is allowed prior to the issuance of this certificate.

Enforcement of regulations. The Town administrator or his/her designee will inspect the property during the course of the project. First inspection is prior to construction to verify accuracy of site plan and additional inspections as needed for building code compliance, prior to permanent installation of foundation, issuance of Town certificate of occupancy, and to ensure that construction is as per planned.

The Town administrator or designee is empowered to issue citations for violations of the above regulations. Failure to institute immediate corrective measures will result in work stoppage and citations for repeated infractions.

(6) Stormwater run-off.

a. All builders will minimize the long-term impact of stormwater run-off produced as a result of their construction. This section applies to all new construction and does not replace subsection (b)(3)d of this section.

b. The effective date of the ordinance from which this section is derived was June 9, 2003.

c. New construction will not intentionally divert untreated stormwater from parking areas onto the street.

d. Construction plans will yield less than one gallon (or 0.1556 cubic feet) of surface water runoff

according to engineering calculations for a peak rain event of six inches (0.5 feet) per hour.

Builders will calculate the stormwater impact of all proposed new construction. The calculation

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Page 82 of 596e. f. g. will take into account the impermeability of engineered surface areas as well as the water

retainability of natural and engineered retention features. The net stormwater impact is the volume

of runoff water calculated by subtraction the lot's ability to absorb water by the stormwater

produced by a building or paving (covering), given as:

New stormwater = (lot's ability to absorb) - (construction's stormwater production)

The construction's stormwater impact will be calculated by multiplying the area of each covered

portion by the associated impermeability factors by a rain rate of 0.51 feet an hour. Then, subtract

from that subtotal the number of gallons credited for those features which absorb or retain water.

Proposed calculations will assume the following:

1. Each 6,000 square foot plot will be credited with the ability to retain 2,571 gallons of water;
2. Each tree less than 12 inches in width (at breast height) provides a credit of ten gallon per inch. Each tree thicker than 12 inches provides a credit of 20 gallons per inch;
3. Horizontally projected roofline (shadow) will create 3.21 gallons per square foot;
4. Concrete or asphalt surfaces will create 2.89 gallons per square foot;
5. Crush-and-run gravel will create 0.640 gallons per square foot;
6. Brick, stone or concrete pavers will create 0.963 gallons per square foot;
7. Uncovered wooden decks with spaces greater than 0.5 inches will not produce stormwater; decks of other materials and with spaces smaller than 0.5 inches will create 0.640 to 0.963 gallons per square foot;
8. Water features (like ponds) will be credited with 16.05 gallons per square foot;
9. Earthen swales with large rocks will be credited with 2.25 gallons per cubic foot;
10. Drywells or concrete stormwater retention ponds will provide a credit of 6.42 gallons per cubic foot.

Calculations will be done by addressing each subtotal as illustrated in the following example:

Gallons

- (1) Single 6,000 square foot lot -2,571
- (2) 6 trees at 4 inches (×-10) plus 5 trees at 6 inches (×-10) -480
- (3) 3 trees at 24 inches (×-20) -1,440
- (4) 1,250 square foot building (× 3.21) 4,013
- (5) 3,000 square foot stone paver parking lot (× 0.963) 2,889
- (6) 150.1 square foot water feature (× 16.06) -2,410

Total 1

(7) This section is constructed to minimize floodplain impact of stormwater by requiring design measures to retain and pretreat stormwater on site prior to its impact to Town and county lakes and streams.

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Page 83 of 596a. b. c. All builders will minimize the impact of their construction on and to the floodplains of the Town.

This section applies to all new construction and does not replace subsection (b)(3)d of this section and is intended to enhance subsection (b)(7) of this section.

New construction will not intentionally divert untreated stormwater from parking areas into the creeks and streams.

The stormwater makeup requirements will be doubled: That is, the builders will have to create twice the stormwater credits proposed in subsection (b)(7) of this section to make up for the amount of water displaced. Therefore, builders will calculate the stormwater impact of all proposed new construction as follows: Net stormwater plus a lots ability to absorb minus construction stormwater productions equals two. Therefore, the specific values outlined in subsection (b)(7) of this section that provide a credit in the lot-specific folding calculation, will only provide half the credit for those developments in the floodplain.

1. Example inside the floodplain:

(i) Single 6,000 square foot lot: -1,285.8 gallons.

(ii) Six trees at four inches ($\times 10$) plus four trees at six inches ($\times 10$): -240 gallons.

2. Example outside the floodplain:

(i) Single 6,000 square foot lot: -2,571 gallons.

(ii) Six trees at four inches ($\times 10$) plus four inches at six inches ($\times 10$): -480 gallons.

(8) Penalties.

a. For the first infraction: stoppage of further work until the infraction is corrected.

b. For any additional infractions: stoppage of further work until the infraction is corrected and a citation to the court is issued.

See Town of Carl UDC. (The Town has adopted the Barrow County Code of Ordinances – Chapter 89)

Sec. 18-6. Inspection authority.

(a) The Town clerk, or his or her duly authorized representative, is hereby authorized to make all inspections as required under the provisions of the codes as adopted in this chapter, and in accordance with any minimum ordinances as may be adopted by the Town. Upon presentation of proper credentials, he or she may enter at 8:00 a.m. to 8:00 p.m. any building, structure, or premises in the Town to perform any duties imposed upon him or her by the codes so adopted by the Town.

(b) The Town mayor, or his or her authorized representatives are hereby authorized and directed to enforce all the provisions of the codes so adopted and are hereby invested with all police powers as authorized by the Town charter, as necessary for this purpose of issuing copies of charges and prosecution or any person as may be

charged with any violation of the codes so adopted.

(c) The Town mayor, or his or her duly authorized representative, shall issue a summons to any person he or she deems to be in violation of the technical codes adopted in this chapter. The summons shall require the person to appear before the judge of the municipal court on a day and time specified in the summons to stand trial for the violation of the code.

Sec. 18-7. Building numbering.

(a) *Posting.*

(1) Each one- and two-family dwelling unit shall have posted and maintained in a conspicuous place on the property, visible from the street providing general public access, the address of such dwelling unit in figures (numbers) measuring at least three inches high on a contrasting background.

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Page 84 of 596(2) (3) (4) (b) Each building containing three or more dwelling units shall have posted and maintained in a conspicuous place on the building, visible from the parking lot or street providing general public access, the address or numbers of the building in figures (numbers) measuring at least six inches high on a contrasting background, and each individual apartment unit within the building shall be marked on or about its main entrance with the individual apartment unit number and address in figures measuring at least three inches high on a contrasting background. In addition to the above, where such building has more than one exterior entrance, each such entrance shall be marked, in figures (numbers) measuring at least three inches high on contrasting background with the number and/or address of each individual apartment/unit to which access is provided through that common entrance.

Each place of business shall have posted and maintained in a conspicuous place on the property, visible from the street providing general public access, the address of the place of business in figures (numbers) measuring at least three inches high on a contrasting background.

Buildings under construction. Numbers must be in a place at the beginning of the job before the footing inspection is made and be continuously displayed thereafter until the job is completed and all final inspections have been made. No inspections will be made where street numbers are not in place as required above. Contractors and others shall always refer to the street numbers when contacting the Town and/or county for an inspection request of information.

Designation of street numbers. Street numbers for dwelling units and places of business on all public streets and street numbers or building numbers for dwelling units and places of business within apartment projects and nonresidential developments located on private streets shall be assigned by the Town in accordance with their administrative procedures.

Secs. 18-8—18-20. Reserved.

ARTICLE II. TECHNICAL CODES

Sec. 18-21. Adopted codes.

(a) The Town of Carl hereby declares its intention to enforce the latest edition of the following Georgia State Minimum Standard Codes, as adopted and amended by the Georgia Department of Community Affairs:

International Building Code;

International Residential Code for One- and Two-Family Dwellings;

International Mechanical Code;

International Fuel Gas Code;

International Plumbing Code;

National Electrical Code;

International Fire Code;

International Energy Conservation Code;

International Swimming Pool and Spa Code.

(b) All appendices of the codes identified in subsection (a), are adopted by the Town.

(c) The following Codes, the latest editions as adopted and amended by the Georgia Department of Community Affairs, including all appendices, are hereby adopted by reference as fully as though they were copied herein fully.

International Property Maintenance Code.

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Page 85 of 596 Sec. 18-22. Duties and powers of building official.

The codes and appendices adopted by section 18-21 shall be administered and enforced by the county development department or contracted by the Town. Administrative provisions found in the various construction codes shall provide guidance for the building official (county or Town) in carrying out his administrative and enforcement responsibilities but are not required except where this article specifically provides a directive to do so.

The building official may make official interpretations of the construction codes, shall be responsible for acceptance of permit applications, issuance of permits, making inspections mandated by said construction codes, and may make additional inspections for the purpose of ensuring compliance with such codes. Permit fees shall be established from time to time by the Town's fee ordinance. The building official shall have a right of entry onto any site covered by an active permit issued under a construction code during normal business hours and may further enter onto such property after normal business hours where an emergency situation exists; provided that if a site covered by a construction codes permit is occupied as a residence, the building official shall first made an effort to contact the permit holder and occupant and seek permission to enter. If permission is denied, the building official may petition a court for a warrant to enter the property. The building official may provide notice of violations identified during the course of his duties and may issue citations when such notice does not result in timely corrective action being taken. Notices of violations shall identify the nature of the violation, the corrective action needed and a reasonable time period for correction of the violation. The building official may issue stop work orders for a site in violation of

construction codes.

Sec. 18-23. Appeals.

(a) (b) Appeals of any notice of violation, citation or other written determination issued by the building official under any of the construction codes adopted and/or enforced by the Town may be taken to the mayor and council by filing a written notice of appeal. Such notice shall be filed with the Town clerk within ten calendar days of the decision from which appeal is taken.

The mayor and council shall serve as the board of appeals for hearing appeals taken from written decisions of the building official. No appeal hearing shall be scheduled on less than five days' notice to the appellant; provided that all appeals shall be heard within 30 days of appeal unless such deadline is waived by the appellant. At the hearing, the appellant may be represented by counsel, may introduce evidence and witnesses and may cross examine any witnesses presented on behalf of the building official. Proceedings shall be tape recorded by the Town. Should the appellant wish to use a court reporter, he may arrange for one at his own expense. The Town attorney may present the case on behalf of the building official. The mayor and council may rule at the close of hearing or may take the matter under advisement, provided a decision shall be reached in no more than 15 days from date of hearing. Should an appellant be dissatisfied with any decision of the mayor and council while serving in its appellant capacity, the appellant may petition for certiorari in accordance with the procedures of state law.

Sec. 18-24. Severability.

In the event of any conflict between the various construction codes adopted and/or enforced by the Town, or any conflict between any such codes and provisions of other Town ordinances, the most stringent regulation shall prevail and be controlling.

Chapter 22 ENVIRONMENT

ARTICLE I. IN GENERAL

TOWN OF CARL, Georgia, Code of Ordinances

Page 86 of 596**Sec. 22-1. Definitions.**

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

Accidental discharge means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence.

Agricultural practices means practices involving the establishment, cultivation or harvesting of products of the field or orchard; the preparation and planting of pasture land or farm ponds; and the construction of farm buildings.

Appeals authority means the board, one of whose purpose is to review appeals to this article and render decisions and variances.

Applicant means a person submitting a post-development stormwater management application and plan for

approval.

Best management practices (BMPs) means a wide range of management procedures, activities and prohibitions or practices which control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

Buffer means, with respect to a stream, a natural or enhanced vegetated area (established by section 22-113(a)(1)), lying adjacent to the stream.

Channel means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clean Water Act means the Federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

Conservation easement means an agreement between a landowner and the Town or other government agency or land trust that permanently protects open space or greenspace on the owner's land by limiting the amount and type of development that can take place, but continues to leave the remainder of the fee interest in private ownership.

Construction activity means activities subject to the state Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

Cooling water act means water used exclusively as a cooling medium in an appliance, device or apparatus.

Conveyance means stormwater features designed for the movement of stormwater through the drainage system, such as concrete or metal pipes, ditches, depressions, swales, etc.

Department means the department of administration responsible for all stormwater management activities and implementation of the provisions of this article.

Detention means the temporary storage of stormwater runoff in a stormwater management facility for the purpose of controlling the peak discharge.

Detention facility means a detention basin or structure designed for the detention of stormwater runoff and gradual release of stored water at controlled rates.

Developer means a person who undertakes land development activities.

Development means a land development or land development project.

Development activity means:

(1) The division of a lot, tract or parcel of land into two or more lots, plots, sites, tracts, parcels or other divisions by plot or deed;

(2) The construction, installation or alteration of a structure, impervious surface or drainage facility;

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Page 87 of 596(3) Clearing, scraping, grubbing or other activities significantly disturbing the soil, vegetation, mud, sand or rock of a site; or

(4) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling,

dredging or otherwise disturbing the soil, vegetation, mud, sand or rock of a site.

Director means either the director of administration or any of that person's duly authorized representatives.

Discharge means the release of treated or untreated water to the municipal/county separate storm sewer system.

Drainage easement means an easement appurtenant or attached to a tract or parcel of land allowing the owner of adjacent tracts or other persons to discharge stormwater runoff onto the tract or parcel of land subject to the drainage easement.

Easement means an acquired legal right for the specific use of land owned by others.

Erosion and sedimentation control plan means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during land disturbance activities.

Extended detention means the detention of stormwater runoff for an extended period, typically 24 hours or greater.

Extreme flood protection means measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

Flood means a general and temporary condition of partial or complete inundation normally dry land areas from:

- (1) The overflow of inland or tidal waters; or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flooding means a volume of surface water that is too great to be confined within the banks or walls of a conveyance or stream channel and that overflows onto adjacent lands.

Floodplain means any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan (i.e., the regulatory flood map).

Generalized wetland map means a map showing the general locations of wetlands within the jurisdiction of the Town.

Greenspace or open space means permanently protected areas of the site that are preserved in a natural state.

Hotspot means an area where the use of the land has the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

Hydric soils means soils that form as a result of saturated soils conditions. A list of these soils is maintained by the soil conservation service.

Hydrologic soil group (HSG) means a natural resource conservation service classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

Hydrophytic vegetation means macrophytic plants tolerant of or dependent on saturated soil conditions.

Illegal connection means either of the following:

(1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted or approved by an authorized enforcement agency; or

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Page 88 of 596(2) Any pipe, open channel, drain or conveyance connected to the (municipal/county) separate storm sewer system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

Illicit discharge means any direct or indirect non-stormwater discharge to the (municipal/county) separate storm sewer system, except as exempted in section 22-25.

Impervious cover means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, and any concrete or asphalt surface, as well as any manmade paved, hardened or structural surface regardless of material.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

Industrial stormwater general permit means the National Pollutant Discharge Elimination System (NPDES) permit issued to an industry for stormwater discharges associated with industrial activity. The permit regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Infiltration means the process of percolating stormwater runoff into the subsoil.

Inspection and maintenance agreement means a written agreement providing for the long-term inspection and maintenance of stormwater management facilities and practices on a site or with respect to a land development project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

Jurisdictional determination means an official, written statement or map signed by the U.S. Corps of Engineers or, in the case of coastal marshlands, the state department of natural resources.

Jurisdictional wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land development means any land change including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

Land development activities means those actions or activities which comprise, facilitate or result in land development.

Land development project means a discrete land development undertaking.

Land disturbance means any land or vegetation change including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

Land disturbance activity means those actions or activities which comprise, facilitate or result in land disturbance.

Litter means any organic or inorganic waste material, rubbish, refuse, garbage, trash, hulls, peelings, debris, grass, weeds, ashes, sand, gravel, slag, brickbats, metal, plastic and glass containers, broken glass, dead animals, solvents, paint, slag, auto parts, metal or intentionally or unintentionally discarded materials of every kind and description which are not waste as such term is defined in O.C.G.A. § 16-7-51(6).

Maintenance means any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes, set forth in this article or to prevent structural failure of such facilities.

National pollutant discharge elimination system (NPDES) stormwater discharge permit means a permit issued by the state EPD under authority delegated pursuant to 33 USC 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

New development means a land development activity on a previously undeveloped site.

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Nonpoint source pollution means a form of water pollution that does not originate from a discrete point such as a sewage treatment plant or industrial discharge, but involves the transport of pollutants such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, organic materials and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, stormwater runoff and leaching. Nonpoint source pollution is a by-product of land use practices such as agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Nonstructural stormwater management practice or nonstructural practice means any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

Off-site facility means a stormwater management facility located outside the boundaries of the site.

On-site facility means a stormwater management facility located within the boundaries of the site.

Overbank flood protection means measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (i.e., flow events that exceed the capacity of the channel and enter the floodplain), and that are intended to protect downstream properties from flooding for the two-year through 25-year frequency storm events.

Owner means the legal or beneficial owner of a site including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee, or other person in control of the site.

Parcel means any plot, lot or acreage shown as a unit on the latest county tax assessment records or Town records.

Permit means the permit issued by the Town to the applicant which is required for undertaking any land development activity.

Person means, except to the extent exempted from this article, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, Town, county or other political subdivision of the state, any interstate body, or any other legal entity.

Town separate storm sewer system or municipal/county system means any facility designed or used for collecting and/or conveying stormwater including, but not limited to, any roads with drainage systems, highways, Town streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs and other drainage structures, and which is:

- (1) Owned or maintained all or in part by the Town;
- (2) Not a combined sewer; and
- (3) Not part of a publicly-owned treatment works.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the

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Page 90 of 596public health, safety, welfare or environment, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Post-development refers to the time period, or the conditions that may reasonably be expected or anticipated to exist, after completion of the land development activity on a site as the context may require.

Pre-development refers to the time period, or the conditions that exist, on a site prior to the commencement of a land development project and at the time that plans for the land development of a site are approved by the plan

approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

Premises mean any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Private means property or facilities owned by individuals, corporations and other organizations and not by the Town, county, state or federal government.

Procedure means a procedure adopted by the utility, by and through the director, to implement a regulation or regulations adopted under this article, or to carry out other responsibilities as may be required by this Code or other codes, ordinances or resolutions of the Town or other agencies.

Project means a land development project.

Protection area or *stream protection area* means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

Public or private property means the right-of-way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge or conservation or recreation area; timberlands or forests; and residential, commercial, industrial or farm properties.

Redevelopment means a land development project on a previously developed site, but excludes ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements which do not materially increase or concentrate stormwater runoff, or cause additional nonpoint source pollution.

Regional stormwater management facility or *regional facility* means stormwater management facilities designed to control stormwater runoff from multiple properties, where the owners or developers of the individual properties may assist in the financing of the facility, and the requirement for on-site controls is either eliminated or reduced.

Regulation means any regulation, rule or requirement prepared by the department and adopted by the Town pursuant to the requirements of this article.

Riparian means belonging or related to the bank of a river, stream, lake, pond or impoundment.

Runoff means stormwater runoff.

Sanitary sewer system means the complete sanitary sewer system of the Town and county which discharge sewage directly or indirectly into the sewage treatment plant, including sanitary sewer pipelines, manholes and flushing inlets and appurtenances to the foregoing, but shall exclude any portion or facilities of the sewage treatment plant.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, ice or gravity from its site of origin.

Setback means, with respect to a stream, the area established by section 22-113(a)(2) extending beyond any

buffer applicable to the stream.

Site means any lot, plot, parcel or tract of land; the parcel of land being developed or the portion thereof on which the land development project is located.

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Statewaters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single person.

Stormwater better sitedesign means nonstructural site design approaches and techniques that can reduce a site's impact on the watershed and can provide for nonstructural stormwater management. Stormwater better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover and using natural features for stormwater management.

Stormwater management means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to meet the objectives of this article and which shall include a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff and water quality impacts caused by manmade changes to the land.

Stormwater management design manual means the most recent manual of design, performance and review criteria for stormwater management practices, prepared under the direction of the director of administration. Copies of the manual can be obtained from the department of administration.

Stormwater management facilities means constructed or natural components of a stormwater drainage system, designed to perform a particular function, or multiple functions, including but not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, sediment basins, natural systems and modular pavement.

Stormwater management measure means any stormwater management facility or nonstructural stormwater practice.

Stormwater management plan means the set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, BMPs, concepts and techniques that will be used to control stormwater as required by this article and the stormwater management design manual. Also included are the supporting engineering calculations and results of any computer analysis.

Stormwater management system means the entire set of structural and nonstructural stormwater management facilities and practices that are used to capture, convey and control the quantity and quality of the stormwater runoff from a site.

Stormwater retrofit means a stormwater management practice designed for a currently developed site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater runoff, runoff or stormwater means any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stream means any stream beginning at:

- (1) The location of a spring, seep or groundwater outflow that sustains streamflow;
- (2) A point in the stream channel with a drainage area of 25 acres or more; or
- (3) Where evidence indicates the presence of a stream in a drainage area less than 25 acres, the Town may require field studies to verify the existence of a stream.

Stream bank means the sloping land that contains the stream channel and the normal flows of the stream.

Stream channel means the portion of a watercourse that contains the base flow of the stream.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Subdivision means any division or re-division of a lot, tract or parcel, regardless of its existing or future use, into two or more lots, tracts or parcels. The term "subdivision" means the act or process of dividing property, except that, where appropriate to the context, the ownership at the time of subdivision.

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Page 92 of 596 *Temporary emergency permit* means a temporary permit that may be issued in certain circumstances specified in section 22-186(c)(6).

Variance means the modification of the minimum stormwater management requirements for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of this chapter.

Water quality means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff.

Watershed means the land area that drains into a particular stream.

Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and distribution sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs and similar areas.

Wetland delineation means the establishment of wetland boundaries by a representative of the U.S. Army Corps of Engineers or an authority designated by the Corps.

Wetland protection district means all wetlands within the jurisdiction of the Town and shown on the generalized wetland map.

(Code 1987)

Sec. 22-2. Rain sensor shut-off switches.

- (a) (b) No person shall install any landscape irrigation system and/or sprinkler system equipped with an electronic

controller that does not have a rain sensor shut-off switch.

Any person who installs, or any property owner who allows to be installed a landscape irrigation system and/or sprinkler system equipped with an electronic controller in violation of this Code shall be liable for a civil penalty not exceeding \$100.00 per violation.

Secs. 22-3—22-19. Reserved.

ARTICLE II. STORMWATER MANAGEMENT

Sec. 22-20. Findings.

It is hereby determined that:

(1) (2) (3) (4) (5) Discharges to the Town separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

These non-stormwater discharges occur due to spills, dumping and improper connections to the Town separate storm sewer system from residential, industrial, commercial or institutional establishments;

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters;

The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

These impacts can be minimized through the regulation of spills, dumping and discharges into the Town separate storm sewer system;

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Page 93 of 596(6) Localities in the state are required to comply with a number of state and federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the Town separate storm sewer system.

Therefore, the Town adopts this article to prohibit such non-stormwater discharges to the (municipal/county) separate storm sewer system. It is determined that the regulation of spills, improper dumping and discharges to the (municipal/county) separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

Sec. 22-21. Scope of responsibility.

(a) The department of administration shall be responsible for the conservation, management, maintenance (where applicable), extension and improvement of the municipal/county separate storm sewer system, including activities necessary to control stormwater runoff and activities necessary to carry out stormwater management programs included in the cities NPDES stormwater permit.

(b) The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other local requirements authorized by state statute. Other stormwater project improvements, as defined under state law, may be

required.

(c) The department of administration shall develop, and update periodically, a stormwater management design manual for the guidance of persons preparing stormwater management plans, and designing or operating stormwater management systems.

(d) The department of administration shall prepare and update a storm management master plan.

Sec. 22-22. Powers of the stormwater authority.

(a) The department of administration shall have the power to administer and enforce all regulations and procedures adopted to implement this article, including the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article.

(b) The department of administration can:

(1) Administer, coordinate and oversee acquisition, design, construction and operate and maintain of municipal/county stormwater facilities and conveyances;

(2) Establish or oversee establishment of development standards and guidelines;

(3) Determine the manner in which stormwater facilities should be operated;

(4) Inspect private systems which discharge to the municipal/county separate stormwater system;

(5) Advise the Town, other departments on issues related to stormwater;

(6) Protect facilities and properties controlled by the department of administration and prescribe how they are used by others;

(7) Require new, increased or significantly changed stormwater contributions to comply with the terms of this article;

(8) Develop programs or procedures to control the discharge of pollutants into the municipal/county separate storm sewer system.

Sec. 22-23. Objectives; purpose; conflict; responsibility.

(a) *Purpose and intent.* The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the Town separate storm sewer system to the maximum extent practicable as required by federal law. This article establishes methods for controlling the

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Page 94 of 596(b) (c) (d) introduction of pollutants into the Town separate storm sewer system in order to comply with requirements of the NPDES permit process. The objectives of this article are to:

(1) Regulate the contribution of pollutants to the Town stormwater authority separate storm sewer system by any person;

(2) Prohibit illicit discharges and illegal connections to the Town stormwater authority separate storm sewer system;

(3) Prevent nonstormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the Town separate storm sewer system; and

(4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.

Applicability. The provisions of this article shall apply throughout the entire area of the Town.

Compatibility with other regulations. This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Responsibility for administration. The Town shall administer, implement, and enforce the provisions of this article. The director of administration or his or her designee will head the local enforcement authority to administer this article.

Sec. 22-24. Illicit discharge and illegal connections.

An illicit discharge is defined as any discharge to a municipal or county separate storm sewer system (stormwater drainage system) that is not composed entirely of stormwater runoff (except for discharges allowed under an NPDES permit or nonpolluting flows). These nonstormwater discharges occur due to illegal dumping or illegal connections to the stormwater drainage system. This model ordinance provides communities with the authority to deal with illicit discharges and establishes enforcement actions for those persons or entities found to be in noncompliance or that refuse to allow access to their facilities.

Sec. 22-25. Prohibitions.

(a) *Prohibition of illicit discharges.* No person shall throw, drain or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the Town separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater. The following discharges are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
- (2) Discharges or flows from firefighting, and other discharges specified in writing by the Town as being necessary to protect public health and safety;
- (3) The prohibition provision above shall not apply to any nonstormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that

written approval has been granted for any discharge to the Town separate storm sewer system.

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Page 95 of 596(b) *Prohibition of illegal connections*. The construction, connection, use, maintenance or continued existence of any illegal connection to the Town separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this article if the person connects a line conveying sewage to the Town separate storm sewer system, or allows such a connection to continue.
- (3) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the (sanitary sewer department/agency) county sewer department.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the director of administration or his or her designee requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Town stormwater authority.

Sec. 22-26. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town stormwater authority prior to allowing discharges to the (municipal/county) separate storm sewer system.

Sec. 22-27. Access and inspection of properties and facilities.

The Town stormwater authority, bearing proper credentials and identification, shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this article.

- (1) (2) (3) (4) (5) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Town stormwater authority.

The owner or operator shall allow the Town stormwater authority ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.

The Town stormwater authority shall have the right to set up on any property or facility such devices as

are necessary in the opinion of the Town stormwater authority to conduct monitoring and/or sampling of flow discharges.

The Town stormwater authority may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Town stormwater authority. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his or her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Town stormwater authority and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

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Page 96 of 596(6) (7) Unreasonable delays in allowing the Town stormwater authority access to a facility are a violation of this article.

If the Town stormwater authority has been refused access to any part of the premises from which stormwater is discharged, and the Town stormwater authority is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Town stormwater authority may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 22-28. Notification of accidental discharges and spills.

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or nonstormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the (municipal/county) separate storm sewer system, state waters or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release so as to minimize the effects of the discharge.

(b) Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town stormwater authority within three business days of the phone or in person notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or

spill.

(c) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

(d) Failure to provide notification of a release as provided above is a violation of this article.

Sec. 22-29. Violations, enforcement and penalties.

(a) *Violations.*

(1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

(2) In the event the violation constitutes an immediate danger to public health or public safety, the Town stormwater authority is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town stormwater authority is authorized to seek costs of the abatement as outlined in subsection (e) of this section.

(b) *Notice of violation.* Whenever the Town stormwater authority finds that a violation of this article has occurred, the Town stormwater authority may order compliance by written notice of violation.

(1) The notice of violation shall contain:

a. The name and address of the alleged violator;

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Page 97 of 596(c) (d) (e) (f) (g) b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;

c. A statement specifying the nature of the violation;

d. A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;

e. A statement of the penalty that shall or may be assessed against the person to whom the notice of violation is directed; and

f. A statement that the determination of violation may be appealed to the Town stormwater authority by filing a written notice of appeal within 30 days of service of notice of violation.

(2) Such notice may require without limitation:

a. The performance of monitoring, analyses and reporting;

b. The elimination of illicit discharges and illegal connections;

c. That violating discharges, practices, or operations shall cease and desist;

d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

e. Payment of costs to cover administrative and abatement costs; and

f. The implementation of pollution prevention practices.

Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the Town stormwater authority. The notice of appeal must be received within 30 days from the date of the notice of violation. Hearing on the appeal before the Town stormwater authority or his or her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the appropriate authority or their designee shall be final.

Enforcement measures after appeal. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of an appeal, within ten days of the decision of the appropriate authority upholding the decision of the Town stormwater authority then representatives of the Town stormwater authority may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Costs of abatement of the violation. Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within 15 days of such notice. If the amount due is not paid within 30 days after receipt of the notice, or if an appeal is taken, within 30 days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the Town by reason of such violation.

Civil penalties. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Town stormwater authority shall deem appropriate, after the Town stormwater authority has taken one or more of the actions described above, the Town stormwater authority may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains un-remedied after receipt of the notice of violation. Upon conviction, a party may be punished as provided by section 1-9.

Criminal penalties. For intentional and flagrant violations of this article, the Town may issue a citation to the alleged violator requiring such person to appear in the Town municipal court to answer charges for such violation. Upon conviction, a party may be punished as provided by section 1-9. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

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Page 98 of 596(h) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, welfare and environment and is declared and deemed a nuisance, and may be abated by

injunctive or other equitable relief as provided by law.

Sec. 22-30. Stormwater management plans.

(a) Applicability and exemptions.

(1) No person shall conduct a development activity without a permit. No permit shall be issued without the following:

- a. An approved stormwater management plan;
- b. Right of entry for emergency maintenance if necessary;
- c. Right of entry for inspections;
- d. Any off-site easements needed;
- e. In addition to all plans and permits required for the Town, applicants shall obtain all state and federal permits required for the proposed development.

(2) Stormwater management plans shall not be required for the following activities:

- a. Mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, provided the stormwater runoff from these operations is composed entirely of flows which are from conveyances or systems of conveyances used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product or byproduct located on the site of such operations;
- b. Such minor development activities as home gardens and individual home landscaping, individual residential repairs, individual residential maintenance work, and other individual residential activities which result in minor soil erosion as determined by the director;
- c. Agricultural practices;
- d. Activities of government to mitigate emergency situations.

(3) Variances.

- a. The director may grant a variance from requirements of this article if exceptional circumstances applicable to a site exist such that strict adherence to ordinance provisions will result in unnecessary hardship and will not fulfill the intent of the ordinance.
- b. The director may grant a variance from requirements of this article if the proposed development activity will not:
 - 1. Change the rate of volume of runoff significantly;
 - 2. Have a significant, negative impact on any wetland, watercourse or water body; or
 - 3. Contribute to degradation of water quality.

(b) Stormwater management plan approval process.

(1) Unless granted an exemption any person planning a development shall submit to the director of

administration ten copies of a stormwater management plan, prepared in accordance with the stormwater management design manual, for review and approval.

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Page 99 of 596(2) A permit fee will be collected at the time the stormwater management plan or application for a waiver is submitted. This fee will reflect the cost of administration and management of the stormwater plan review process.

(3) The director or his or her designee shall review the plan.

a. The director of the department of administration shall issue a decision approving, rejecting or conditionally approving the plan with modification.

b. The director's decision will be based on conformance with requirements included in the cities stormwater management design manual. No plan shall be approved unless it conforms with the requirements included in the stormwater management design manual. The director may require such additional documents or other items necessary to make this determination.

c. If rejected, changes, additional analysis or other information needed to approve the next submittal of the plan shall be identified.

(4) If the management plan involves any stormwater management facilities or land to be dedicated to public use, the management plan shall be submitted for review and approval to the department having jurisdiction over that land, or other appropriate departments or agencies identified by the director of the department of administration for review and approval.

(5) Approval plans shall be valid for two year from the date of approval.

a. Extensions or renewals of plan approvals shall be granted by the director of administration upon written request by the person responsible for the development activity.

b. A stormwater management plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans from the department of administration. The stamp of approval on the plans is solely an acknowledgment of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the applicant or any other person concerning the safety, appropriateness or effectiveness of any provision, or omission from the stormwater management plan.

(c) Permit suspension and revocation.

(1) The manual shall be developed to assist in design and evaluation of stormwater management facilities and practices. This manual will include, but not be limited to, the following information:

a. Guidance and specifications for the preparation of stormwater management plans. Acceptable techniques for obtaining, calculating and presenting the information required in the plans shall be described, as will design conditions which must be accounted for.

b. Guidance in selecting environmental sound practices for managing stormwater. Description of

specific techniques and practices shall be included. Development and use of techniques emphasizing use of natural systems shall be encouraged.

c. Minimum specifications for designing, constructing, and maintaining stormwater management facilities. These specifications shall be established in accordance with current good engineering practices.

d. Minimum easement requirements.

e. More complete definitions of some included in the ordinance.

f. Development performance standards for stormwater management facilities and practices.

Methodology/criteria for evaluation will include:

1. Hydrologic and hydraulic evaluations;
2. Evaluation of best management practices (BMPs); and
3. Evaluation of downstream impacts.

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Page 100 of 596(2) (3) g. Criteria for 100-year floodplain analysis.

The manual shall be updated periodically to reflect the most current and effective practices and shall be made available to the public.

The manual is not designed to replace the need for engineering judgment. Rather, other accepted engineering procedures may be used to conduct hydrologic and hydraulic studies if approved by the director of administration.

Sec. 22-31. Ownership, maintenance and inspection.

(a) *Maintenance and inspection.*

(1) (2) (3) (4) (5) (6) (7) (8) (9) Any stormwater management facility which services a single lot or commercial and industrial development shall be privately owned and maintained. The owner shall maintain a perpetual, nonexclusive easement which allows access for maintenance.

All other stormwater management control facilities shall be publicly owned and/or maintained only if accepted for maintenance by the Town.

The director may require dedication of privately owned stormwater facilities which discharge to the municipal/county separate stormwater system to the Town.

The department director shall determine inspection schedules necessary to enforce the provisions of this article. Inspections may include, but not limited to, the following:

- a. An initial inspection prior to stormwater management plan approval;
 - b. A bury inspection prior to burial of any underground drainage structure;
 - c. Erosion control inspections as necessary to ensure effective control of erosion and sedimentation;
- and
- d. A final inspection when all work, including installation of drainage facilities, has been completed.

The director or his or her designee, bearing proper credentials and identification, shall be permitted to enter, in accordance with state and federal law, all properties for regular inspections, periodic investigations, observation, measurement, enforcement, sampling and testing, in accordance with provisions of this article. The director or his or her designee shall duly notify the owner of said property or the representative on site, except in the case of an emergency.

The director or designated employee of the department of administration, bearing proper credentials and identification, shall be permitted to enter, in accordance with state and federal law, all properties for which the Town holds a negotiated easement for repairs, maintenance and other purposes related to any portion of the stormwater management facilities lying within said easement. The director or his or her designee shall duly notify the owner of said property or the representative on site, except in the case of an emergency.

Measurements, tests and analyses performed by the department of administration or required of discharge to the municipal/county system shall be in accordance with 40 CFR 136, unless another method is approved by the director.

If, after inspection, the condition of a facility presents an immediate danger to the public health, safety or general welfare because of unsafe conditions or improper maintenance, the Town shall have right, but not duty to take action as may be necessary to protect the public and make the facility safe.

The department of administration shall inspect the work and shall either approve it or notify the applicant in writing in what respects there has been failure to comply with the requirements of the approved stormwater management plan. Any portion of the work which does not comply shall be promptly corrected by the applicant, or said applicant shall be subject to a penalty.

(b) Off-site drainage facilities.

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Page 101 of 596(1) The director may allow stormwater runoff that otherwise is of unacceptable quality or which would be discharged in volumes or at rates in excess of those otherwise allowed by this article, to be discharged into drainage facilities off the site of the development, provided the applicant has demonstrated:

- a. Off-site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with requirements of this article.
- b. Adequate provision is made for sharing of construction, maintenance and operating costs of facilities. The developer may be required to pay a portion of the cost of constructing facilities as a condition to receiving approval of the stormwater management design manual.
- c. It is not feasible to completely manage runoff on-site in a manner that meets the design and performance standards found in the cities stormwater management design manual.

(2) A request to use off-site drainage facilities and all information related to proposed off-site facilities should be made a part of the developer's stormwater management plan.

(3) Guidelines for consideration of off-site facility use will be defined in the Town's stormwater management manual.

Sec. 22-32. Miscellaneous provisions.

(a) Penalties.

(1) Upon determination that a violation of this article has occurred, the director of administration shall give written notice to the accused violator within ten days. This notice shall specify the nature and evidence of violation and the potential penalty involved and the amount of time in which to correct deficiencies, if appropriate.

(2) Violation of the provisions of this article constitutes an infraction which shall, upon conviction, be punishable as provided by section 1-9. The Town may institute appropriate action of proceedings at law or equity for the enforcement of this article or to correct violations of this article. Any court of competent jurisdiction may have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Each day of noncompliance is considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief.

(3) Any violator may be required to restore land to its undisturbed condition. If corrective action is not taken in reasonable period of time, the department of administration may take corrective action, the cost of which becomes a lien upon the property.

(4) Any person who shall proceed with any work which requires a stormwater management plan hereunder without first submitting such plan shall pay the Town in addition to any permit or inspection fee, a penalty of \$1,000.00.

(5) Enforcement of this article is final unless the accused violator submits a written request for a hearing within ten days of the violation notice being served.

(b) Variances from requirements.

(1) The director may grant a variance from requirements of this article if exceptional circumstances applicable to a site exist such that strict adherence to the provisions of this article will result in unnecessary hardship and will not fulfill the intent of this article.

(2) A written request for a variance shall be required and shall state the specific variance sought and the reasons, with supporting data, a variance should be granted. The request shall include all information necessary to evaluate the proposed variance.

(3) The director will conduct a review of the request for a variance within ten working days of receiving the request.

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Page 102 of 596(c) *Appeals.*

(d) (e) (1) Any person aggrieved by a decision of the director (including any decision with reference to the granting

or denial of a variance from the terms of this article) may appeal same by filing a written notice of appeal with the director within 30 working days of the issuance of said decision by the director.

(2) The director can then reverse his or her decision or send this notice to the Town council. A notice of appeal shall state the specific reasons why the decision of the director is alleged to be in error, and the director shall prepare and send to the Town council and appellant written response to said notice of appeal within 30 days of receipt of the notice.

(3) All appeals shall be heard by the Town council in accord with the Town councils authority. The hearing shall be held within 30 days after receipt of notice of appeal or a date mutually agreed upon in writing by the appellant and the mayor. The Town council shall then make its findings within 30 days of the appeal hearing. Decisions of the Town council shall be based on guidelines for appeals established by this Code and amended from time to time, with guidelines published in a newspaper of general circulation.

(4) If either the appellant or director is dissatisfied with the Town council decision, he or she can appeal said decision to the superior court.

Cooperation with other governments. The Town may enter into agreements with other local governments to carry out the purpose of this article. These agreements may include, but are not limited to, enforcement of provisions, resolution of disputes, cooperative monitoring and cooperative management of stormwater system and management programs.

Property owner liability-supplemental charges. Any person in violation of any portion of this article shall pay for all Town costs associated with the violation including, but not limited to, containment, cleanup, death, legal and other costs.

Secs. 22-33—22-53. Reserved.

ARTICLE III. POST-DEVELOPMENT STORMWATER MANAGEMENT

Sec. 22-54. Adoption and implementation of the GSMM; conflicts and inconsistencies; designation of administrator.

(a) (b) (c) (d) In implementing this article, the Town of Carl shall use and require compliance with all relevant design standards, calculations, formulas, methods, and other guidance from the GSMM as well as related appendices. This article is not intended to modify or repeal any other article, ordinance, rule, regulation, or other provision of law including, but not limited to, any applicable stream buffers under state or local laws, and the Georgia Safe Dams Act and Rules for Dam Safety. In the event of any conflict or inconsistency between any provision in the Town of Carl's MS4 permit and this article, the provision from the MS4 permit shall control. In the event of any conflict or inconsistency between any provision of this article and the GSMM, the provision from this article shall control. In the event of any other conflict or inconsistency between any provision of this article and any other ordinance, rule, regulation or other provision of law, the provision that is more restrictive or imposes higher protective standards for human health or the environment shall control.

If any provision of this article is invalidated by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this article.

The mayor may from time to time appoint someone to administer and implement this article.

Sec. 22-55. Applicability criteria for stormwater management standards.

This article applies to the following activities:

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Page 103 of 596(1) New development that creates or adds 5,000 square feet or more of impervious cover, or that involves other land disturbing activities of one acre or more;

(2) Redevelopment that includes the creation, addition or replacement of 5,000 square feet or more of impervious cover, or that involves other land disturbing activity of one acre or more;

(3) Any new development or redevelopment, regardless of size, that is a hotspot land use as defined in this chapter; or

(4) New development and redevelopment if:

a. Such new development or redevelopment is part of a subdivision or other common plan of development; and

b. The sum of all associated impervious surface area or land disturbing activities that are being developed as part of such subdivision or other common plan of development meets or exceeds the threshold in (1) and (2) above.

(5) Linear transportation projects that exceed the threshold in (1) or (2) above.

(b) The following activities are exempt from this article:

(1) Land disturbing activity conducted by local, state, authority, or federal agencies, solely to respond to an emergency need to protect life, limb, or property or conduct emergency repairs;

(2) Land disturbing activity that consists solely of cutting a trench for utility work and related pavement replacement;

(3) Land disturbing activity conducted by local, state, authority, or federal agencies, whose sole purpose is to implement stormwater management or environmental restoration;

(4) Repairs to any stormwater management facility or practice deemed necessary by the administrator;

(5) Agricultural practices as described in O.C.G.A. § 12-7-17(5) within areas zoned for these activities with the exception of buildings or permanent structures that exceed the threshold in subsection (a)(1) or (2) above;

(6) Silvicultural land management activities as described in O.C.G.A. § 12-7-17(6) within areas zoned for these activities with the exception of buildings or permanent structures that exceed the threshold in subsection (a)(1) or (2) above;

(7) Installation or modifications to existing structures solely to implement Americans with Disabilities Act (ADA) requirements, including but not limited to elevator shafts, handicapped access ramps and

parking, and enlarged entrances or exits; and

(8) Linear transportation projects being constructed by the Town of Carl to the extent the administrator determines that the stormwater management standards may be infeasible to apply, all or in part, for any portion of the linear transportation project. For this exemption to apply, an infeasibility report that is compliant with the Town of Carl's linear feasibility program shall first be submitted to the administrator that contains adequate documentation to support the evaluation of the applicable portion(s) and any resulting infeasibility determination, if any, by the administrator.

Sec. 22-56. Stormwater management standards.

Subject to the applicability criteria in Section 22-55(a) and exemptions in Section 22-55(b), the following stormwater management standards apply. Additional details for each standard can be found in the GSMM Section 2.2.2.2:

(1) *Design of stormwater management system.* The design of the stormwater management system shall be in accordance with the applicable sections of the GSMM as directed by the administrator. Any design which proposes a dam shall comply with the Georgia Safe Dams Act and Rules for Dam Safety as applicable.

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Page 104 of 596(2) (3) (4) (5) (6) (7) *Natural resources inventory.* Site reconnaissance and surveying techniques shall be used to complete a thorough assessment of existing natural resources, both terrestrial and aquatic, found on the site.

Resources to be identified, mapped, and shown on the Stormwater Management Plan shall include, at a minimum, as applicable:

- a. Topography (minimum of two-foot contours) and steep slopes (i.e., areas with slopes greater than 15 percent);
- b. Natural drainage divides and patterns;
- c. Natural drainage features (e.g., swales, basins, depressional areas);
- d. Natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers, drinking water wellhead protection areas and river corridors;
- e. Predominant soils (including erodible soils and karst areas); and
- f. Existing predominant vegetation including trees, high quality habitat and other existing vegetation.

Better site design practices for stormwater management. Stormwater management plans shall preserve the natural drainage and natural treatment systems and reduce the generation of additional stormwater runoff and pollutants to the maximum extent practicable. Additional details can be found in the GSMM Section 2.3.

Stormwater runoff quality/reduction. Stormwater runoff quality/reduction shall be provided by using the following:

- a. For development with a stormwater management plan submitted before July 1, 2020, the applicant

may choose either 1. Runoff reduction; or 2. Water quality.

b. For development with a stormwater management plan submitted on or after July 1, 2020, the applicant shall choose 1. Runoff Reduction and additional water quality shall not be required. To the extent 1. Runoff Reduction has been determined to be infeasible for all or a portion of the site using the Practicability Policy, then 2. Water Quality shall apply for the remaining runoff from a 1.2-inch rainfall event and must be treated to remove at least 80% of the calculated average annual post-development total suspended solids (TSS) load or equivalent as defined in the GSMM.

1. *Runoff reduction.* The stormwater management system shall be designed to retain the first 1.0 inch of rainfall on the site using runoff reduction methods, to the maximum extent practicable.

2. *Water quality.* The stormwater management system shall be designed to remove at least 80 percent of the calculated average annual post-development total suspended solids (TSS) load or equivalent as defined in the GSMM for runoff from a 1.2-inch rainfall event.

c. If a site is determined to be a hotspot as detailed in sections 22-1 and 22-55, the Town of Carl may require the use of specific or additional components for the stormwater management system to address pollutants of concern generated by that site.

Stream channel protection. Stream channel protection shall be provided by using all of the following three approaches:

- a. Twenty-four-hour extended detention storage of the one-year, 24-hour return frequency storm event;
- b. Erosion prevention measures, such as energy dissipation and velocity control; and
- c. Preservation of any applicable stream buffer.

Overbank flood protection. Downstream overbank flood protection shall be provided by controlling the post-development peak discharge rate to the pre-development rate for the 25-year, 24-hour storm event.

Extreme flood protection. Extreme flood protection shall be provided by controlling the 100-year, 24-hour storm event such that flooding is not exacerbated.

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Page 105 of 596(8) *Downstream analysis.* Due to peak flow timing and runoff volume effects, some structural components of the stormwater management system fail to reduce discharge peaks to pre-development levels

downstream from the site. A downstream peak flow analysis shall be provided to the point in the watershed downstream of the site or the stormwater management system where the area of the site comprises 10% of the total drainage area in accordance with Section 3.19 of the GSMM. This is to help ensure that there are minimal downstream impacts from development on the site. The downstream analysis may result in the need to resize structural components of the stormwater management system.

(9) *Stormwater management system inspection and maintenance* The components of the stormwater

management system that will not be dedicated to and accepted by the Town of Carl, including all drainage facilities, best management practices, credited conservation spaces, and conveyance systems, shall have an inspection and maintenance agreement to ensure that they continue to function as designed. All new development and redevelopment sites are to prepare a comprehensive inspection and maintenance agreement for the on-site stormwater management system. This plan shall be written in accordance with the requirements in section 22-59.

Sec. 22-57. Application fee and procedures; pre-submittal meeting, stormwater concept plan; stormwater management plan requirements.

(a) The fee for review of any land development application shall be based on the fee structure established by the Town, and payment shall be made before the issuance of any land disturbance permit or building permit for the development.

(b) Land development applications are handled as part of the process to obtain the land disturbance permit pursuant to section 22-228 or building permit pursuant to section 18-5, as applicable. Before any person begins development on a site, the owner of the site shall first obtain approval in accordance with the following procedure:

(1) File a land development application with the Town of Carl on the Town's form of application with the following supporting materials:

- a. The stormwater management plan prepared in accordance with section 22-57(g) and (h);
- b. A certification that the development will be performed in accordance with the stormwater management plan once approved;
- c. A Preliminary determination of infeasibility, if applicable, prepared in accordance with the practicability policy; and
- d. An acknowledgement that applicant has reviewed the Town's form of inspection and maintenance agreement and that applicant agrees to sign and record such inspection and maintenance agreement before the final inspection.

(2) The administrator shall inform the applicant whether the application and supporting materials are approved or disapproved.

(3) If the application or supporting materials are disapproved, the administrator shall notify the applicant of such fact in writing. The applicant may then revise any item not meeting the requirements hereof and resubmit the same for the administrator to again consider and either approve or disapprove.

(4) If the application and supporting materials are the Town may issue the associated land disturbance permit or building permit, provided all other legal requirements for the issuance of such permits have been met. The stormwater management plan included in such applications becomes the approved stormwater management plan.

(c) All development shall be consistent with the approved stormwater management plan and all applicable land

disturbance and building permits and shall be conducted only within the area specified in the approved stormwater management plan. No changes may be made to an approved stormwater management plan without review and advanced written approval by the administrator.

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Page 106 of 596(d) (e) (f) (g) Before a land development permit application is submitted, an applicant may request a pre-submittal meeting with the Town of Carl. The pre-submittal meeting should take place based on an early step in the development process such as before site analysis and inventory (GSMM Section 2.4.2.4) or the stormwater concept plan (GSMM Section 2.4.2.5). The purpose of the pre-submittal meeting is to discuss opportunities, constraints, and ideas for the stormwater management system before formal site design engineering. To the extent applicable, local and regional watershed plans, greenspace plans, trails and greenway plans, and other resources protection plans should be consulted in the pre-submittal meeting. Applicants must request a pre-submittal meeting with the Town of Carl when applying for a Determination of Infeasibility through the Practicability Policy.

The stormwater concept plan shall be prepared using the minimum following steps:

- (1) Develop the site layout using better site design techniques, as applicable (GSMM Section 2.3).
- (2) Calculate preliminary estimates of the unified stormwater sizing criteria requirements for stormwater runoff quality/reduction, channel protection, overbank flooding protection and extreme flood protection (GSMM Section 2.2).
- (3) Perform screening and preliminary selection of appropriate best management practices and identification of potential siting locations (GSMM Section 4.1).

The stormwater concept plan shall contain:

- (1) Common address and legal description of the site;
- (2) Vicinity map; and
- (3) Existing conditions and proposed site layout mapping and plans (recommended scale of 1" = 50'), which illustrate at a minimum:
 - a. Existing and proposed topography (minimum of two-foot contours);
 - b. Perennial and intermittent streams;
 - c. Mapping and predominant soils from USDA soil surveys;
 - d. Boundaries of existing predominant vegetation and proposed limits of clearing and grading;
 - e. Location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.);
 - f. Location of existing and proposed roads, buildings, parking areas and other impervious surfaces;
 - g. Existing and proposed utilities (e.g., water, sewer, gas, electric) and easements;
 - h. Preliminary estimates of unified stormwater sizing criteria requirements;

- i. Preliminary selection and location, size, and limits of disturbance of proposed BMPs;
- j. Location of existing and proposed conveyance systems such as grass channels, swales, and storm drains;
- k. Flow paths;
- l. Location of the boundaries of the base flood floodplain, future-conditions floodplain, and the floodway (as applicable) and relationship of site to upstream and downstream properties and drainage; and
- m. Preliminary location and dimensions of proposed channel modifications, such as bridge or culvert crossings.

The stormwater management plan shall contain the items listed in this part and be prepared under the direct supervisory control of either a registered professional engineer or a registered landscape architect licensed in the State of Georgia. Items (3), (4), (5), and (6) shall be sealed and signed by a registered professional

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 engineer licensed in the state of Georgia. The overall site plan must be stamped by a design professional licensed in the State of Georgia for such purpose. (GSMM Section 2.4.2.7).

- (1) Natural resources inventory.
- (2) Stormwater concept plan.
- (3) Existing conditions hydrologic analysis.
- (4) Post-development hydrologic analysis.
- (5) Stormwater management system.
- (6) Downstream analysis.
- (7) Erosion and sedimentation control plan.
- (8) BMP landscaping plan.
- (9) Inspection and maintenance agreement.
- (10) Evidence of acquisition of applicable local and non-local permits.
- (11) Determination of infeasibility (if applicable).
- (h) For redevelopment and to the extent existing stormwater management structures are being used to meet stormwater management standards the following must also be included in the stormwater management plan for existing stormwater management structures:
 - (1) As-built drawings.
 - (2) Hydrology reports.
 - (3) Current inspection of existing stormwater management structures with deficiencies noted.
 - (4) BMP landscaping plan.

Sec. 22-58. Construction inspections of post-development stormwater management system.

- (a) *Inspections to ensure plan compliance during construction.*

(1) Periodic inspections of the stormwater management system construction shall be conducted by the staff of the Town or conducted and certified by a professional engineer who has been approved by the Town.

Construction inspections shall utilize the approved stormwater management plan for establishing compliance.

(2) All inspections shall be documented with written reports that contain the following information:

- a. The date and location of the inspection;
- b. Whether construction is in compliance with the approved stormwater management plan;
- c. Variations from the approved construction specifications; and
- d. Any other variations or violations of the conditions of the approved stormwater management plan.

If any violations are found, the applicant shall be notified in writing of the nature of the violation and the required corrective actions.

(b) *Final inspection and as built plans.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant is responsible for certifying that the completed project is functioning properly and in accordance with the approved stormwater management plan and associated hydrologic analysis. The required certification shall include a certification of volume, or other performance test applicable to the type of stormwater management system component, to ensure each component is functioning as designed and build according to the design specifications in the approved stormwater management plan. This certification and the required performance tests shall be performed by a qualified person and submitted to the Town with the TOWN OF CARL, Georgia, Code of Ordinances

Page 108 of 596request for a final inspection. The Town, or a contractor acting on behalf of the Town, shall perform a final inspection with applicant to confirm applicant has fulfilled these responsibilities.

(1) All applicants are required to submit actual "as built" plans for any stormwater management facilities after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and practices and must be certified by a professional engineer. A final inspection by the Town is required before the release of any performance securities can occur.

(2) The applicant(s) must certify that the landscaping is established and installed in conformance with the BMP landscaping plan.

(3) The applicant(s) must deliver to the Town a signed inspection and maintenance agreement that has been recorded by the owner in the property record for all parcel(s) that make up the site.

Sec. 22-59. Ongoing inspection and maintenance of stormwater facilities and practices.

(a) *Maintenance of stormwater management systems predating current GSSM.* For any stormwater management systems approved and built based on requirements predating the current GSMM and that is not otherwise subject to an inspection and maintenance agreement, such stormwater management systems shall be maintained by the owner so that the stormwater management systems perform as they were originally designed.

(b) *Inspection and maintenance agreements.*

(1) The owner shall execute an inspection and maintenance agreement with the Town obligating the owner to inspect, clean, maintain, and repair the stormwater management systems, including vegetation in the final BMP landscaping plan. The form of the inspection and maintenance agreement shall be the form provided by the Town of Carl. After the inspection and maintenance agreement has been signed by the owner and the Town, the owner shall promptly record such agreement at the owner's cost in the property record for all parcel(s) that make up the site and deliver to the Town a copy of document showing the recording.

(2) The inspection and maintenance agreement shall identify by name or official title the person(s) serving as the point of contact for carrying out the owner's obligations under the inspection and maintenance agreement. The owner shall update the point of contact from time to time as needed and upon request by the Town. Upon any sale or transfer of the site, the new owner shall notify the Town in writing within 30 days of the name or official title of new person(s) serving as the point of contact for the new owner. Any failure of an owner to keep the point of contact up to date shall, following 30 days' notice, constitute a failure to maintain the stormwater management system.

(3) The inspection and maintenance agreement shall run with the land and bind all future successors-in-title of the site. If there is a future sale or transfer of only a portion of the site, then:

a. The parties to such sale or transfer may enter into and record an assignment agreement designating the owner responsible for each portion of the site and associated obligations under the inspection and maintenance agreement. The parties shall record and provide written notice and a copy of such recorded assignment agreement to the Town.

b. In the absence of a recorded assignment agreement, all owners of the site shall be jointly and severally liable for all obligations under the inspection and maintenance agreement regardless of what portion of the site they own.

(b) *Right of entry for maintenance inspections.* The terms of the inspection and maintenance agreement shall provide for the Town's right of entry for maintenance inspections and other specified purposes. If a site was developed before the requirement to have an inspection and maintenance agreement or an inspection and maintenance agreement was for any reason not entered into or recorded, or has otherwise been invalidated or deemed insufficient, then the Town shall have the right to enter and make inspections pursuant to the Town's general provisions for property maintenance inspections pursuant to sections 18-6.

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Page 109 of 596(c) *Owner's failure to maintain the stormwater management system.* The terms of the inspection and maintenance agreement shall provide for what constitutes a failure to maintain a stormwater management system and the enforcement options available to the Town of Carl. If a site was developed before the requirement to have an inspection and maintenance agreement or an inspection and maintenance agreement was for any reason not

entered into or recorded, or has otherwise been invalidated or deemed insufficient then:

(1) An owner's failure to maintain the stormwater system so that it performs as it was originally designed shall constitute and be addressed as a violation or failure to comply with owner's maintenance obligations pursuant to Chapter 18 and Sections 50-27, 50-28, and 54-32.

(2) To address such a failure to maintain the stormwater management system, the Town shall have all the powers and remedies that are available to it for other violations of an owner's property maintenance obligations including, without limitation, prosecution, penalties, abatement, lien and emergency measures.

Sec. 22-60. Violations, enforcement and penalties.

Any action or inaction which violates the provisions of this article or the requirements of an approved stormwater management plan or permit may be subject to the enforcement actions outlined in this section. A violation may include, but is not limited to, failure to submit as-built drawings, failure to submit a final BMP landscaping plan, or failure of the final inspections and may constitute and be addressed as violations of, or failures to comply with the underlying land disturbance permit pursuant to section 22-228 or the underlying building permit pursuant to Chapter 18. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any other penalties shall not prevent such equitable relief. To address a violation of this article, the Town shall have all the powers and remedies that are available to it for other violations of building and land disturbance permits and, in addition, it may utilize the notice and penalty provisions below.

(1) *Notice of violation.* If the Town determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:

- a. The name and address of the owner or the applicant or the responsible person;
- b. The address or other description of the site upon which the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this article and the date for the completion of such remedial action;
- e. A statement of the penalty that may be assessed against the person to whom the notice of violation is directed; and
- f. A statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within 30 days after the notice of violation (except, that in the event the violation

constitutes an immediate danger to public health or public safety, 24-hours' notice shall be sufficient).

(2) *Penalties.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Town shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except, that in the event the

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Page 110 of 596violation constitutes an immediate danger to public health or public safety, 24-hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Town may take any one or more of the following actions or impose any one or more of the following penalties:

a. b. c. d. e. *Stop-work order.* The Town may issue a stop-work order which shall be served on the applicant or other responsible person. The stop-work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation described therein, provided that the stop-work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation.

Withhold certificate of occupancy. The Town may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

Suspension, revocation or modification of permit. The Town may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the Town may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

Civil penalties. In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Town shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hours' notice shall be sufficient) after the Town has taken one or more of the actions described above, the

Town may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

Criminal penalties. For intentional and flagrant violations of this article, the Town may issue a citation to the applicant or other responsible person, requiring such person to appear in the Town magistrate court to answer charges for such violation. Upon conviction, such person shall be punished according to the general penalties described in section 1-9. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Secs. 22-61—22-78. Reserved.

ARTICLE IV. OPEN SPACE DEVELOPMENT

Sec. 22-79. Purposes.

The purposes of the open space development are as follows:

(1) (2) (3) To provide for the preservation of greenspace as a nonstructural stormwater runoff and watershed protection measure.

To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.

To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.

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Page 111 of 596(4) To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.

(5) To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.

(6) To promote interconnected greenways and corridors throughout the community.

(7) To promote contiguous greenspace with adjacent jurisdictions.

(8) To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.

(9) To encourage street designs that reduces traffic speeds and reliance on main arteries.

(10) To promote construction of convenient landscaped walking trails and bike paths both within the Town and connected to neighboring communities, businesses and facilities to reduce reliance on automobiles.

(11) To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.

(12) To preserve important historic and archaeological sites.

Sec. 22-80. General regulations.

(a) *Applicability of regulations.* This conservation of open space option is available on all properties zoned residential in the Town as a use by right. Applicant shall comply with all other provisions of the zoning code and all other applicable laws, except those that are incompatible with the provisions contained herein.

(b) *Ownership of development site.* The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.

(c) *Housing density determination.* The maximum number of lots in the subdivision shall be determined, at the discretion of the local jurisdiction, by either of the following two methods:

(1) *Calculation.* The maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the underlying zoning. In making this calculation, the following shall not be included in the total area of the parcel:

- a. Slopes over 25 percent of at least 5,000 square feet contiguous area;
- b. The 100-year floodplain;
- c. Bodies of open water over 5,000 square feet contiguous area;
- d. Wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act ("Federal Water Pollution Control Act" 33 USC 1251 et seq.); or
- e. Anticipated right-of-way needs for roads and utilities.

(2) *Yield plan.* The maximum number of lots is based on a conventional Town design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations.

Sec. 22-81. Application requirements.

(a) *Site analysis map required.* Concurrent with the submission of a site concept plan, the applicant shall prepare and submit a site analysis map. The purpose of the site analysis map is to ensure that the important site

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features have been adequately identified prior to the creation of the site design, and that the proposed open space will meet the requirements of this article. The preliminary site plan shall include the following features:

- (1) Property boundaries;
- (2) All streams, rivers, lakes, wetlands and other hydrologic features;
- (3) Topographic contours of no less than ten-foot intervals;
- (4) All primary and secondary conservation areas labeled by type, as described in section 22-82;
- (5) General vegetation characteristics;
- (6) General soil types;
- (7) The planned location of protected open space;

(8) Existing roads and structures; and

(9) Potential connections with existing greenspace and trails.

(b) *Open space management plan required.* An open space management plan, as described in section 22-82, shall be prepared and submitted prior to the issuance of a land disturbance permit.

(c) *Instrument of permanent protection required.* An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in section 22-82, shall be placed on the open space concurrent with the issuance of a land disturbance permit.

(d) *Other requirements.* The applicant shall adhere to all other applicable requirements of the underlying zoning and the building code.

Sec. 22-82. Open space.

(a) *Definition.* The term "open space" means the portion of the Town that has been set aside for permanent protection. Activities within the open space are restricted in perpetuity through the use of an approved legal instrument.

(b) *Standards to determine open space.*

(1) The minimum restricted open space shall comprise at least 40 percent of the gross tract area.

(2) The following are considered primary conservation areas and are required to be included within the open space, unless the applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:

a. The regulatory 100-year floodplain;

b. Buffer zones of at least 75-foot width along all perennial and intermittent streams;

c. Slopes above 25 percent of at least 5,000 square feet contiguous area;

d. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act ("Federal Water Pollution Control Act" 33 USC 1251 et seq.);

e. Populations of endangered or threatened species, or habitat for such species; and

f. Archaeological sites, cemeteries and burial grounds.

(3) The following are considered secondary conservation areas and should be included within the open space to the maximum extent feasible.

a. Important historic sites;

b. Existing healthy, native forests of at least one acre contiguous area;

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Page 113 of 596(c) (d) (e) c. Individual existing healthy trees greater than eight inches caliper, as measured from their outermost drip line;

d. Other significant natural features and scenic viewsheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;

e. Prime agricultural lands of at least five acres contiguous area; and

f. Existing trails that connect the tract to neighboring areas.

(4) Aboveground utility rights-of-way and small areas of impervious surface may be included within the protected open space but cannot be counted towards the 40 percent minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the open space.

(5) At least 75 percent of the open space shall be in a contiguous tract. The open space should adjoin any neighboring areas of open space, other protected areas, and nonprotected natural areas that would be candidates for inclusion as part of a future area of protected open space.

(6) The open space shall be directly accessible to the largest practicable number of lots within the subdivision. Nonadjoining lots shall be provided with safe, convenient access to the open space.

Permitted uses of open space. Uses of open space may include the following:

- (1) Conservation of natural, archeological or historical resources;
- (2) Meadows, woodlands, wetlands, wildlife corridors, game preserves or similar conservation-oriented areas;
- (3) Walking or bicycle trails, provided they are constructed of porous paving materials;
- (4) Passive recreation areas;
- (5) Active recreation areas, provided that they are limited to no more than ten percent of the total open space and are not located within primary conservation areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected open space;
- (6) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within primary conservation areas;
- (7) Nonstructural stormwater management practices;
- (8) Easements for drainage, access and underground utility lines; or
- (9) Other conservation-oriented uses compatible with the purposes of this article.

Prohibited uses of open space.

- (1) Golf courses;
- (2) Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
- (3) Agricultural and forestry activities not conducted according to accepted best management practices; and
- (4) Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

Ownership and management of open space.

(1) *Ownership of open space.* The applicant must identify the owner of the open space who is responsible for maintaining the open space and facilities located thereon. The responsibility for maintaining the open

space and any facilities located thereon shall be borne by the owner.

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Page 114 of 596(f) (2) *Management plan*. Applicant shall submit a plan for management of open space and common facilities (plan) that:

- a. Allocates responsibility and guidelines for the maintenance and operation of the open space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
- b. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the open space and outlines the means by which such funding will be obtained or provided;
- c. Provides that any changes to the plan be approved by the Town council; and
- d. Provides for enforcement of the plan.

(3) *Liability of party; corrective measures by the Town; cost*. In the event the party responsible for maintenance of the open space fails to maintain all or any portion in reasonable order and condition, the Town may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, and may include administrative costs and penalties. Such costs shall become a lien on all properties owned by the same party.

Legal instrument for permanent protection.

(1) The open space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:

- a. A permanent conservation easement in favor of either:
 1. A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 2. A governmental entity with an interest in pursuing goals compatible with the purposes of this article;
 3. If the entity accepting the easement is not the Town, then a third right of enforcement favoring the Town shall be included in the easement;
- b. A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or
- c. An equivalent legal tool that provides permanent protection, if approved by the Town.

(2) The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this article, as well as any further restrictions the applicant chooses to place on the use of the open space.

Sec. 22-83. Greenspace set asides.

Designated "preferred" set aside properties will be identified by the Town council on a Greenspace priority map. Highest priority will be given to those properties adjacent to wetlands, waterways, or areas of intense drainage.

Secs. 22-84—22-108. Reserved.

ARTICLE V. STREAM BUFFER PROTECTION

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Page 115 of 596**Sec. 22-109. Title.**

This article shall be known as the "The Town of Carl Stream Buffer Protection Ordinance."

Sec. 22-110. Findings and purposes.

(a) *Findings.* Whereas the council and mayor of the Town finds that buffers adjacent to streams provide numerous benefits including:

- (1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources.
- (2) Removing pollutants delivered in urban stormwater.
- (3) Reducing erosion and controlling sedimentation.
- (4) Protecting and stabilizing stream banks.
- (5) Providing for infiltration of stormwater runoff.
- (6) Maintaining base flow of streams.
- (7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem.
- (8) Providing tree canopy to shade streams and promote desirable aquatic habitat.
- (9) Providing riparian wildlife habitat.
- (10) Furnishing scenic value and recreational opportunity.
- (11) Providing opportunities for the protection and restoration of greenspace.

(b) *Purposes.* It is the purpose of this article to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- (1) Create buffer zones along the streams of the Town for the protection of water resources; and
- (2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

Sec. 22-111. Violations, enforcement and penalties.

Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

(1) *Notice of violation.* If the Town determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:

- a. The name and address of the owner or the applicant or the responsible person;
- b. The address or other description of the site upon which the violation is occurring;
- c. A statement specifying the nature of the violation;

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Page 116 of 596(2) d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this article and the date for the completion of such remedial action;

e. A statement of the penalty that may be assessed against the person to whom the notice of violation is directed; and

f. A statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).

Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Town shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Town may take any one or more of the following actions or impose any one or more of the following penalties:

a. *Stop work order.* The Town may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation.

b. *Withhold certificate of occupancy.* The Town may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

c. *Suspension, revocation or modification of permit.* The Town may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Town may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

d. *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the Town shall deem appropriate (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), after the Town has taken one or more of the actions described above, the Town may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

e. *Criminal penalties.* For intentional and flagrant violations of this article, the Town may issue a citation to the applicant or other responsible person, requiring such person to appear in Town magistrate court to answer charges for such violation. Upon conviction, such person shall be punished as provided by section 1-9. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

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Page 117 of 596 **Sec. 22-112. Applicability.**

(a) This article shall apply to all land development activity on property containing a stream protection area as defined in section 22-110. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

(1) *Grandfather provisions.* This article shall not apply to the following activities:

a. Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of the ordinance from which this section is derived.

b. Existing development and ongoing land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new

development or land disturbance activities on such properties will be subject to all applicable buffer requirements.

c. Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of the ordinance from which this section is derived.

d. Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of the ordinance from which this section is derived.

(2) *Exemptions.* The following specific activities are exempt from this article.

a. Activities for the purpose of building one of the following:

1. A stream crossing by a driveway, transportation route or utility line;
2. Public water supply intake or public wastewater outfall structures;
3. Intrusions necessary to provide access to a property;
4. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
5. Unpaved foot trails and paths;
6. Activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.

b. Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility including, but not limited to, manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in subsection (b)a of this section.

c. Land development activities within a right-of-way existing at the time this article takes effect or approved under the terms of this article.

d. Within an easement of any utility existing at the time this article takes effect or approved under the terms of this article, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility including, but not limited to, manholes, vents and valve structures.

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Page 118 of 596e. Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the Town on the

next business day after commencement of the work. Within ten days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the Town to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.

f. Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

(b) After the effective date of the ordinance from which this section is derived, it shall apply to new subdividing and platting activities. Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to section 22-113(b).

Sec. 22-113. Land development requirements.

(a) *Buffer and setback requirements.* All land development activity subject to this article shall meet the following requirements:

(1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.

(2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

(3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

(b) *Variance procedures.* Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:

(1) Where a parcel was platted prior to the effective date of the ordinance from which this section is derived, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the Town finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the Town council may grant a variance from the buffer and setback requirements hereunder, provided such variance requires mitigation measures to offset the effects of any proposed land development on the parcel.

(2) Except as provided above, the Town council shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the council. The Town shall give public notice of each such public

hearing in a newspaper of general circulation within the Town. The Town shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way. Variances will be considered only in the following cases:

- a. When a property's shape, topography or other physical conditions existing at the time of the adoption of this article prevents land development unless a buffer variance is granted.
- b. Unusual circumstances when strict adherence to the minimal buffer requirements in this article would create an extreme hardship.

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Page 119 of 596Variances will not be considered when, following adoption of this article, actions of any property owner of a given property have created conditions of a hardship on that property.

(3) At a minimum, a variance request shall include the following information:

- a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
- b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
- d. Documentation of unusual hardship should the buffer be maintained;
- e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
- f. A calculation of the total area and length of the proposed intrusion;
- g. A stormwater management site plan, if applicable; and
- h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

(4) The following factors will be considered in determining whether to issue a variance:

- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- b. The locations of all streams on the property, including along property boundaries;
- c. The location and extent of the proposed buffer or setback intrusion;
- d. Whether alternative designs are possible which require less intrusion or no intrusion;
- e. The long-term and construction water-quality impacts of the proposed variance;
- f. Whether issuance of the variance is at least as protective of natural resources and the environment.

Sec. 22-114. Compatibility with other buffer regulations and requirements.

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Sec. 22-115. Additional information requirements for development on buffer zone properties.

Any permit applications for property requiring buffers and setbacks hereunder must include the following:

(1) A site plan showing:

- a. The location of all streams on the property;
- b. Limits of required stream buffers and setbacks on the property;
- c. Buffer zone topography with contour lines at no greater than five-foot contour intervals;

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Page 120 of 596d. Delineation of forested and open areas in the buffer zone; and

- e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;

(2) A description of all proposed land development within the buffer and setback; and

(3) Any other documentation that the Town may reasonably deem necessary for review of the application and to insure that the buffer zone ordinance is addressed in the approval process.

All buffer and setback areas must be recorded on the final plat of the property following plan approval.

Sec. 22-116. Responsibility.

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the Town, its officers or employees, for injury or damage to persons or property.

Sec. 22-117. Inspection.

(a) The Town may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the Town in making such inspections. The Town shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

(b) No person shall refuse entry or access to Town administrator and any authorized representative or agent who

requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative in the process of carrying out official duties.

Sec. 22-118. Administrative appeal and judicial review.

(a) *Administrative appeal.* Any person aggrieved by a decision or order of Town, may appeal in writing within five days after the issuance of such decision or order to the director of administration of the Town and shall be entitled to a hearing before the Town council of the Town within 30 days of receipt of the written appeal.

(b) *Judicial review.* Any person aggrieved by a decision or order of Town, after exhausting all administrative remedies, shall have the right to appeal to a court of competent jurisdiction.

Secs. 22-119—22-150. Reserved.

ARTICLE VI. LITTER CONTROL

Sec. 22-151. Findings.

Litter found throughout our community often finds its way into our streams, rivers and lakes and detracts from our quality of life. Pollutants carried into our streams, rivers and lakes by litter, diminish the quality of our water and its aquatic resources. Litter control ordinances provide a prohibition against littering and provide an enforcement mechanism with penalties for dealing with those found littering.

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Page 121 of 596**Sec. 22-152. Purpose and intent.**

The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation and prevention of litter. The objectives of this article are:

- (1) Provide for uniform prohibition throughout the Town of any and all littering on public or private property; and
- (2) Prevent the desecration of the beauty and quality of life of the Town and prevent harm to the public health, safety, environment and general welfare, including the degradation of water and aquatic resources caused by litter.

Sec. 22-153. Applicability.

This article shall apply to all public and private property within the Town.

Sec. 22-154. Compatibility with other regulations.

This article replaces in its entirety section 50-60, but is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Sec. 22-155. Violations, enforcement and penalties.

(a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise sentenced in a manner provided by law.

(b) *Evidence.*

(1) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane or other conveyance in violation of this article, it shall be prima facie evidence that the operator of the conveyance has violated this article.

(2) Except as provided in subsection (b)(1) of this section, whenever any litter which is dumped, deposited, thrown or left on public or private property in violation of this article is discovered to contain any article, including but not limited to letters, bills, publications or other writing which display the name of the person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this article.

(c) *Penalties.* Any person who violates this article shall be guilty of a violation and, upon conviction thereof, shall be punished as follows:

(1) As provided by section 1-9;

(2) In addition to the fine set out in subsection (c)(1) of this section, the violator shall reimburse the Town for the reasonable cost of removing the litter when the litter is or is ordered removed by the Town; and

(3) a. In the sound discretion of the court, the person may be directed to pick up and remove from any public street or highway or public right-of-way for a distance not to exceed one mile any litter he or she has deposited and any and all litter deposited thereon by anyone else prior to the date of execution of sentence; or

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Page 122 of 596b. In the sound discretion of the court, the person may be directed to pick up and remove any and all litter from any public property, private right-of-way, or with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it can be established by competent evidence that he or she has deposited litter. Pick up and removal shall include any and all litter deposited thereon by anyone prior to the date of execution of sentence; and

(4) The court may publish the names of persons convicted of violating this article.

(d) *Enforcement.* All law enforcement agencies, officers and officials of this state or any political subdivision thereof, or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this article.

Sec. 22-156. Prohibition against littering public or private property or waters.

It shall be unlawful for any person to dump, deposit, throw or leave or to cause or permit the dumping, depositing, placing, throwing or leaving of litter on any public or private property in this Town or any waters in this

Town unless:

- (1) The property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter, and such person is authorized by the proper public authority to use such property;
- (2) The litter is placed into a receptacle or container installed on such property; or
- (3) The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare.

Sec. 22-157. Vehicle loads causing litter.

No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is adequately secured to prevent the dropping or shifting of materials from such load onto the roadway.

Secs. 22-158—22-222. Reserved.

***ARTICLE VIII. SOIL EROSION, SEDIMENTATION AND POLLUTION
CONTROL ORDINANCE***

Sec. 22-223. Title.

Ordinance."

This article will be known as "The Town of Carl Soil Erosion, Sedimentation and Pollution Control

Sec. 22-224. Definitions.

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

Best Management Practices (BMPs): These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia' published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

Board: The Board of Natural Resources.

Buffer: The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

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Certified Personnel: A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.

Commission: The Georgia Soil and Water Conservation Commission (GSWCC).

CPESC means a Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.

Cut: A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as excavation.

Department: The Georgia Department of Natural Resources (DNR).

Design professional means 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 EnviroCert, Inc. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.

Director: The Director of the Environmental Protection Division or an authorized representative.

District: The Barrow County Soil and Water Conservation District.

Division: The Environmental Protection Division (EPD) of the Department of Natural Resources.

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.

Erosion: The process by which land surface is worn away by the action of wind, water, ice or gravity.

Erosion, Sedimentation and Pollution Control Plan: A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section 22-226.C. of this article.

Fill: A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.

Final stabilization means all soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

Finished Grade: The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

Grading: Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

Ground Elevation: The original elevation of the ground surface prior to cutting or filling.

Land-Disturbing Activity: Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Section III, Paragraph 5.

Larger Common Plan of Development or Sale: A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch,

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Page 124 of 596advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

Local Issuing Authority: The governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.

Metropolitan River Protection Act (MRPA): A state law referenced as O.C.G.A. 12-5-440 et seq. which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

Natural Ground Surface: The ground surface in its original state before any grading, excavation or filling.

Nephelometric Turbidity Units (NTU): Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed or suspended particles are present.

NOI: A Notice of Intent form provided by EPD for coverage under the State General Permit.

NOT: A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

Operator: The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.

Outfall: The location where 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.

Permit: The authorization necessary to conduct a land-disturbing activity under the provisions of this article.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, any interstate body or any other legal entity.

Phase or Phased: 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.

Project: The entire proposed development project regardless of the size of the area of land to be disturbed.

Properly Designed: Designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the Manual as approved by the Commission up until the date of NOI submittal.

Roadway Drainage Structure: A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Sediment: Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.

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Sedimentation: The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

Soil and Water Conservation District Approved Plan: An erosion, sedimentation and pollution control plan approved in writing by the Barrow County Soil and Water Conservation District.

Stabilization: The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

State General Permit: The National Pollution Discharge Elimination System (NPDES) general permit or permits for 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.

State Waters: Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

Structural Erosion, Sedimentation and Pollution Control Practices: Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level

spreaders, waterways or outlets, diversions, grade stabilization structures and sediment traps, etc. Such practices can be found in the publication Manual for Erosion and Sediment Control in Georgia.

Trout Streams means 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.epd.georgia.gov. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Vegetative Erosion and Sedimentation Control Measures: Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- 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.

Watercourse: Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Wetlands: Those areas that are inundated or saturated by surface or 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.

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Page 126 of 596 **Sec. 22-225. Exemptions.**

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

1. Surface mining, as the same is defined in O.C.G.A. 12-4-72, "The Georgia Surface Mining Act of 1968".

Granite quarrying and land clearing for such quarrying;

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;

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 acre and not otherwise exempted under this paragraph; provided, however, that

construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of 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;

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; 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 22-226.C. of this article, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;

Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;

Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and 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 acre, which involves land-disturbing activity, and which is within 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;

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Page 127 of 5969. 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.

Sec. 22-226. Minimum requirements for erosion, sedimentation and pollution control using Best Management Practices.

A. *General Provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this article shall contain provisions for application

of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 22-226.B. and C. of this article. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this article and the NPDES General Permit.

B. Minimum Requirements/BMPs.

1. Best management practices as set forth in Section 22-226.B. and C. of this article 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).

2. 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

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Page 128 of 596C. 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.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a Local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.

4. The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.

5. The LIA may set more stringent buffer requirements than stated in C.15. and 16., in light of O.C.G.A. § 12-7-6(c).

Additional Requirements. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
2. Cut-fill operations must be kept to a minimum;
3. Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential;
4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
6. Disturbed soil shall be stabilized as quickly as practicable;
7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 et seq.;
10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
11. Cuts and fills may not endanger adjoining property;
12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

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Page 129 of 59613. 14. 15. 16. 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;

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 22-226.B.2. of this article;

Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the 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 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:

a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and

There is established a 50 foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed ; provided, however, that small springs and

streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:

a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed:

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Page 130 of 596 provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

D. Nothing contained in O.C.G.A. 12-7-1 et seq. shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section 22-226.B. and C. of this article.

E. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this article or the terms of the permit.

Sec. 22-227. Application/permit process.

A. *General.* The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The Local Issuing Authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this article, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the

Local Issuing Authority. However, the owner and/or operator are the only parties who may obtain a permit.

B. Application Requirements.

1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the Town of Carl, GA without first obtaining a permit from the Town of Carl to perform such activity and providing a copy of Notice of Intent submitted to EPD, as applicable.

2. The application for a permit shall be submitted to the Town Manager or his/her designee 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 22-227.C. of this article. 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 22-226.B. and C. of this article will be met. Applications for a permit will not be accepted unless accompanied by up to six copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10. Additional copies of the applicant's erosion, sedimentation and pollution control plans may also be submitted directly to EPD, as specified by the Town of Carl.

3. The Town of Carl assesses local permitting fees and also state-mandated fees. All applicable fees shall be paid prior to issuance of the land disturbance permit. Except as otherwise provided for herein, fees for an application for a permit on a per-acre of land disturbed basis, as required by this article, shall be as established by the Town of Carl from time to time by resolution of the Town Council. In addition to the local permitting fees, state-mandated fees shall also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), and regulations adopted thereunder by EPD, in the amount of \$80.00 per disturbed acre, to be divided as follows: \$40.00 per acre to Bartow County and \$40.00 per acre to the Georgia Environmental Protection Division. In the case of a subdivision or other larger common plan of development or sale, "per disturbed acre" includes all acreage to be disturbed in the entire development. Fees for the county shall be submitted to the county including primary and secondary permittees. Fees for the state shall be submitted to the state on EPD forms available at <http://www.gaepd.org>. However, any and all fees due

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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.

4. Immediately upon receipt of an application and plan for a permit, the Town of Carl shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The District shall approve or disapprove a plan within 35 days of receipt. Failure of the District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Town of Carl. No permit

will be issued unless the plan has been approved by the District, and any variances required by Section 22-226.C. 15. and 16. has been obtained, all fees have been paid, and bonding, if required as per Section 22-227.B.6., have been obtained. Such review will not be required if the Town of Carl and the District enter into an agreement which allows the Town to conduct such review and approval of the plan without referring the application and plan to the District.

5. If a permit applicant has had two or more violations of previous permits, this article section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing the application under consideration, the Local Issuing Authority may deny the permit application.

6. The Town of Carl shall require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the Town may call the bond 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. The Town Manager may release a portion of the letter of credit, for the land-disturbing amount, after final stabilization is complete and all permanent vegetation and stabilization measures are in place. If the permit holder believes they are not in violation of this article such that the surety should not be drawn against, the permit holder may appeal any notice to comply to the Town of Carl. Appeal shall be made by filing a written notice of appeal within five days of any notice to comply to with the Town Manager stating the basis for the appeal. The Town Council shall consider the appeal at the next scheduled public meeting. Except in emergency situations, the surety shall not be drawn against until the appeal is considered. The decision of the Town Council shall be final.

C. Plan Requirements.

1. Plans must be prepared to meet the minimum requirements as contained in Section 22-226.B. and C. of this article, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this article. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and 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.

2. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

D. Permits.

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the Town of Carl of a completed application, providing variances and bonding are TOWN OF CARL, Georgia, Code of Ordinances

Page 132 of 596obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.

2. No permit shall be issued by the Town of Carl unless the erosion, sedimentation and pollution control plan has been approved by the District and the Town Manager or his/her designee has affirmatively determined that the plan is in compliance with this article, any variances required by Section 22-226.C.

15. and 16. are obtained, bonding requirements, if necessary, as per Section 22-227.B.6. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Town of Carl are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

3. Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this article, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the local issuing authority.

4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.

5. The permit may be suspended, revoked, or modified by the Town of Carl, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this article. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

6. The Town of Carl 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).

Sec. 22-228. Inspection and enforcement.

A. The Town of Carl is responsible for periodically inspecting all 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 Town of Carl shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be

responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this article, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article.

B. The Town of Carl must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.

C. The Town of Carl shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

D. No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

E. The District or the Commission or both shall 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

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Page 133 of 596improving the effectiveness of the county's or municipality's erosion, sedimentation and pollution control program. The District or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.

F. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to 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 90 days after

notification by the division, the division shall revoke the certification of the county or municipality as a Local Issuing Authority.

Sec. 22-229. Penalties and incentives.

A. Failure to Obtain a Permit for Land-disturbing Activity. If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this article without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the Local Issuing Authority.

B. Stop-Work Orders.

1. For the first and second violations of the provisions of this article, the Director or the Town of Carl 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 Town of Carl 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 Town of Carl shall issue an immediate stop-work order in lieu of a warning;

2. For a third and each subsequent violation, the Director or the Town of Carl shall issue an immediate stop-work order; and;

3. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

4. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the Town of Carl 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 Town or by the Director or his or her Designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

C. Bond Forfeiture. If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section 22-227.B.6. The Town of Carl 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.

Page 134 of 596D. *Monetary Penalties.* Any person who violates any provisions of this article, or any permit condition or limitation established pursuant to this article, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this article shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this article, notwithstanding any provisions in any Town Charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this article under county ordinances approved under this article shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

Sec. 22-230. Education and certification.

A. Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.

B. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this article.

D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of 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.

Sec. 22-231. Administrative appeal and judicial review.

A. *Administrative Remedies.* The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in

violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Town Town Council within thirty (30) days after receipt by the Town Manager of written notice of appeal.

B. *Judicial Review*. Any person, aggrieved by a decision or order of the Town Town Council, after exhausting his administrative remedies, shall have the right to appeal de novo to the Municipal Court of Town of Carl, Georgia.

Sec. 22-232. Effectivity, validity and liability.

A. *Effectively*. This article shall become effective upon adoption.

B. *Validity*. If any section, paragraph, clause, phrase, or provision of this article shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this article.

C. *Liability*.

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Page 135 of 5961. 2. 3. Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Local Issuing Authority or District for damage to any person or property.

The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this article or the terms of the permit.

No provision of this article shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any Waters of the State as defined thereby.

Secs. 22-233—22-250. Reserved.

ARTICLE IX. TOWN OF CARL TREE CONSERVATION ORDINANCE

Sec. 22-251. Purpose.

a. b. c. d. The purpose of this ordinance is to recognize the importance of trees to the environment within the Town of Carl for the purposes of health and welfare, beauty, safety, history, and general well-being, and to promote: (1) tree conservation, (2) the increase, renewal, and proliferation of trees and the tree canopy, and (3) the protection of existing trees. This ordinance is designed to provide reasonable minimum standards regarding the preservation, planting, protection and maintenance of trees within the Town. The provisions and regulations contained herein, along with the Administrative Standards and Best Management Practices for Town's Urban Forest, will guide practices to accomplish said purpose.

The Town of Carl further recognizes benefits derived from the conservation, proliferation, and renewal of trees and increased canopy including but not limited to:

- i. The improvement of air quality by providing filtration of dust and fumes;
- ii. The conservation of energy and mitigation of the urban heat island effect through shading and transpiration;
- iii. The reduction of storm water runoff and flooding by dissipating rainfall and absorbing moisture;
- iv. The reduction of soil erosion and improved water quality;
- v. The improvement of habitat for desirable wildlife by providing diversity for food, shelter, and nesting sites;
- vi. The reduction of health risks to residents due to improved environmental conditions;
- vii. The improvement of community aesthetics and quality of life by having a diverse environment;
- viii. The reduction of ambient noise levels;
- ix. The mitigation of conditions in areas of vehicular use by providing buffering and shading; and
- x. The general enhancement of economic value to properties.

The requirement of a high level of quality in the maintenance and development of land is consistent with community standards and the economic necessity of maintaining Town as a desirable place to live and conduct business.

The intent of this ordinance is to preserve and enhance the Town's tree canopy and provide environmental education to the residents of the Town.

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Page 136 of 596 **Sec. 22-252 Definitions.**

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

Administrative Standards: The Administrative Standards and Best Management Practices for Town's Urban Forest prepared in conjunction with this Ordinance and which, as they exist and may be amended from time to time, shall be incorporated herein, and a copy of which shall be maintained in the office of the Town Clerk of the Town of Carl, Georgia. If any term of the Administrative Standards is deemed to conflict with the terms of this article, the terms of the Ordinance shall be controlling.

Boundary Tree: A tree 18 inches (dbh) or larger located on a property adjacent to a permitting property whose critical root zone or canopy extends into that permitting property.

Buffer Tree: A tree 18 inches (dbh) or larger located in the minimum required yards/setbacks of any property.

Buildable Area: The area of a lot within a given zoning district not to include the minimum required yards/setbacks of any property.

Caliper: The trunk diameter measurement of nursery stock trees measured at 6 inches above the ground up to and including 4 inches caliper size and 12 inches above the ground for larger trees.

Canopy Requirements: The percentage of tree Canopy coverage as set forth in Exhibit "A," Table 1,

Canopy Requirements Table. For the purposes of this ordinance the canopy percentage on any property shall be the square footage of the total existing tree Canopy on a property, divided by the total square footage of the permitting property.

Canopy Tree: A large or medium tree with a crown size and shape that will typically provide at maturity significant shade and beneficial effects on temperature, air quality, water quality, and other environmental conditions. A canopy tree is also referred to as a "shade tree."

Certified Arborist: an arborist certified by the International Society of Arboriculture as possessing the minimum level of competency required to practice arboriculture.

Critical Root Zone: The minimum rooting volume of a tree necessary to sustain the tree's life, generally defined by the tree's drip line or 1.25 feet for every inch (dbh), which ever is greater, to a depth of 3 feet.

Damaged Tree: A tree that has damage to any of its parts, including the roots, root buttress, trunk, or branches.

Destroyed Tree: A tree, which has damage to any of its parts causing, as determined by the Town Arborist, the tree's survival beyond three (3) growing seasons to be unlikely.

Diameter at Breast Height (dbh): The diameter of a tree's trunk measured at 4.5 feet above the ground. For multi-trunk trees the diameter is measured at the narrowest point beneath the point of attachment of the multiple trunks.

Ecological Compatibility: The suitability and functionality of a given tree species for its growing site based on its potential size, slope, exposure, soil, and drainage preferences; growth and structural characteristics; and use in the landscape.

Hazardous Tree A tree where the tree is at risk for failure because it is dead or structurally defective, and where that failure could result in personal injury or property damage, as determined by the Director of Administrator or his/her designee.

Land Disturbance Permit: A permit issued by the Town of Carl that authorizes the alteration or development of a given tract of land or any land disturbing activity.

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Page 137 of 596*Landmark Tree:* A: (1) hardwood tree 27 inches (dbh) or larger, (2) pine tree 30 inches (dbh) or larger, provided that it is not located within thirty (30) feet of any structure, or (3) dogwood or redbud tree 10 inches (dbh) or larger being in fair or better condition.

Town Arborist/Town Arborist: The individual authorized by the Director of Administration to administer and enforce the requirements and standards as set forth in the Town Tree Conservation Ordinance.

Protected Tree: A tree 18 inches (dbh) or larger, other than a Landmark Tree or Buffer Tree, in fair or better condition.

Qualified Professional: Any individual possessing a degree in forestry, urban forestry, landscape architecture, or horticulture, having been trained by the Town of Carl in the implementation of this article, and

tree protection in building construction. The Town Arborist shall certify and maintain a list of Qualified Professionals.

Site/Tree Conservation Plan (STCP): A plan as required in Section 6 of this article.

Tree: A self-supporting woody plant material capable of reaching a minimum (dbh) of 6 inches and a height of 15 feet.

Tree Authority Board (TAB): A board consisting of Town residents, established by Town Council, which presides in conjunction with the Town administration to oversee the permitting of tree removal.

Tree Bank: an account within the Town budget to receive funds to be used for future tree plantings

Tree Canopy: The square footage of the aggregate of the canopy of all trees contained on a property.

Tree Protection Zone: The area of a lot for a given zoning district defined by the minimum required yards and the critical root zone of any protected tree.

Tree Removal Permit: A permit as required pursuant to this Ordinance issued by the Town of Carl for land disturbance or the removal of trees.

Sec. 22-253. Tree removal or destruction—Tree removal permit required.

a. b. c. d. e. f. The removal or destruction of any Landmark Tree shall require a Tree Removal Permit pursuant to Section 22-254(a) of this article.

Any land disturbing activity or construction activity including but not limited to grading, digging, soil disturbance or other activity which could result in damage to root structure in the Critical Root Zone of any Boundary Tree shall require a Tree Removal Permit pursuant to Section 22-254(b) of this article.

The removal or destruction of any Landmark Tree, Protected Tree or Buffer Tree on residential property devoted to any residential use shall require compliance with Section 22-255 of this article.

The removal or destruction of: (1) any Protected Tree on property devoted to other than single family or duplex residential use, or (2) any Landmark Tree, Protected Tree or Buffer Tree in conjunction with activity requiring the issuance of a building permit (other than a building permit for a deck or open air patio not to exceed 200 square feet, fence, or interior renovations), demolition permit, land disturbance permit, or erosion and grading permit by the Town of Carl, Georgia, shall require a Tree Removal Permit in compliance with Section 22-256 hereof.

All permit requirements as set forth herein shall be deemed cumulative with the most restrictive category being operative regarding any particular application.

A Hazardous Tree may be removed without a Tree Removal Permit; provided, however, should the Hazardous Tree have otherwise met the requirements of being a tree protected under the terms of this article, including but not limited to a Landmark Tree, Buffer Tree, Boundary Tree, or Protected Tree, the owner of the property shall immediately notify the Town of Carl of the removal of the tree and provide documentation from a certified arborist that the removed tree was a Hazardous Tree as defined herein. Should it be determined that

Page 138 of 596any tree so removed was not a Hazardous Tree, the provisions of this article shall be applied regarding the removal of such tree.

g. A tree may be removed without a Tree Removal Permit if it is no greater than 6' in height, measured from the base of the trunk to the top most point.

h. Nothing in this article shall prohibit or restrict normal tree maintenance (including the removal of dead wood and branches or limbs which endanger life or property); provided however that no tree protected herein shall be limbed, topped or pruned in a manner so as to deprive the tree of continued viability.

Sec. 22-254. Tree removal permit—Landmark tree/boundary tree.

a. Landmark Trees.

i. A Tree Removal Permit allowing the destruction or removal of a Landmark Tree pursuant to this Section shall be permitted only if the Town of Carl determines that the removal of said Landmark Tree is warranted based upon: (1) the size and configuration of the property; (2) the physical condition of the Landmark Tree; (3) the Tree Canopy of common areas adjacent to the property; or (4) other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on or adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the Town; or generally recognized good forestry practices.

ii. All Landmark Trees removed pursuant to section (i) above shall be replaced by the planting of a new tree(s) on the property of a comparable species and with a canopy potential of 150% of the canopy of the Landmark Tree to foster the enhancement of the tree canopy. If, however, the Town Arborist determines that replacement is not practical based upon the factors set forth in (a)(i) above, payment may be made into the Town Tree Bank in lieu of replacement planting. The compensation for the lost Tree Canopy shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

iii. A Tree Removal Permit shall not be issued until both: (1) payment of any required amounts have been received by the Town Tree Bank, and (2) the Town has been provided adequate assurances of any required canopy replacement, as reflected in the approved site plan.

b. Boundary Trees.

i. No land disturbing activity or construction activity including but not limited to grading, digging, soil disturbance or other activity resulting in damage to root structure in the Critical Root Zone of any Boundary Tree shall be permitted should the Town Arborist determine that the activity will deprive the Boundary Tree of continued viability.

ii. Should the Town Arborist determine that it is uncertain whether the proposed land disturbance or construction activity will deprive the Boundary Tree of continued viability, and that there is not a sufficient basis to prohibit the activity under section (b)(i), a Tree Removal Permit allowing the activity shall be issued only after compliance with Section 22-257 of this article.

iii. Should the Town Arborist determine that the proposed land disturbance or construction activity will not deprive the Boundary Tree of continued viability; a Tree Removal Permit shall be issued.

Sec. 22-255. Tree removal permit—Residential use.

A Tree Removal Permit pursuant to this Section shall be issued only upon compliance with the following:

a. *Required Documentation.* In conjunction with an application pursuant to this section, the applicant shall submit to the Director of Administration documentation (i.e. photographs, drawings, or similar documentation deemed acceptable by the Director of Administration) showing the location of all existing Trees on the property. Such documentation shall show the location, species, and approximate caliper size of all existing trees noting with specificity the Landmark Trees, Protected Trees and Buffer Trees which are proposed to be removed pursuant to this Section.

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Page 139 of 596b. *Landmark Trees.* The removal of Landmark Trees pursuant to the Section shall be in accordance with Section 22-254(a).i-ii. above.

c. *Protected Trees.* If:

i. the applicant has submitted the documentation required by Section 22-255(a) to the Town of Carl not less than fourteen (14) business days prior to the proposed removal of Protected Trees, and (2) the removal or destruction of the Protected Trees, in conjunction with all tree removal being conducted, will not cause the Tree Canopy on the property to fall below the Canopy Requirements, a Tree Removal Permit may be issued upon review of submitted documentation.

ii. For the removal or destruction of Protected Trees on property not meeting the Canopy Requirements, or property on which the removal or destruction of the Protected Tree, in conjunction with all tree removal being conducted, will cause the Tree Canopy to fall below the Canopy Requirements, the applicant shall, at his election, provide for mitigation of all lost Tree Canopy below the Canopy Requirements by: (A) replacing the lost Tree Canopy through planting tree(s) on the property of comparable species and canopy potential, or (B) payment into the Town Tree Bank for the lost Tree Canopy. The compensation for the lost Tree Canopy shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

d. *Buffer Trees.*

i. The removal or destruction of Buffer Trees shall be permitted only if the Town Arborist determines that the removal of said Buffer Tree is warranted based upon: (1) the size and configuration of the property; (2) the physical condition of the Buffer Tree; (3) the Tree Canopy of common areas adjacent to the property; or (4) other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on or adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost

effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the Town; or generally recognized good forestry practices.

ii. For removal or destruction of Buffer Trees approved pursuant to (d)(i) above, which removal or destruction, in conjunction with all tree removal being conducted, will not cause the Tree Canopy to fall below the Canopy Requirements, a Tree Removal Permit shall be issued.

iii. For removal or destruction of Buffer Trees approved pursuant to (d)(i) above, on property not meeting the Canopy Requirements, or property on which the removal or destruction of the Buffer Tree, in conjunction with all tree removal being conducted, will cause the Tree Canopy to fall below the Canopy Requirements, the applicant shall, at its election, provide for mitigation of all lost Tree Canopy below the Canopy Requirements by: (A) replacing the lost Tree Canopy through planting tree(s) on the property of comparable species and canopy potential, or (B) payment into the Town Tree Bank for the lost Tree Canopy. The compensation for the lost Tree Canopy shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

c. Payment/Assurances Required.

i. A Tree Removal Permit shall not be issued hereunder until both: (1) payment of any required amounts have been received by the Town Tree Bank, and (2) the Town has been provided adequate assurances of any required canopy replacement.

Sec. 22-256. Tree Removal Permit—Site/Tree Conservation Plan Required.

A Tree Removal Permit pursuant to this Section shall only be issued upon compliance with the following:

a. Site/Tree Conservation Plan Required.

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Page 140 of 596i. In conjunction with an application pursuant to this section, the applicant shall submit a Site/Tree

Conservation Plan (STCP) prepared by a Qualified Professional for review by the Town of Carl.

The approval of the STCP by the Town of Carl shall be required prior to the issuance of a Tree Removal Permit pursuant to this section.

ii. The STCP shall document: the species, (dbh), critical root zone and location of all existing Trees and Critical Root Zones on the property; the location, species, and caliper size of all proposed mitigation planting trees; and the location of all proposed building construction and land development activities, including grading, drainage, proposed utility locations and all proposed tree protection measures.

iii. The STCP shall document all Trees proposed for removal.

iv. The STCP shall document the calculation of the Tree Canopy on the property prior to and following the implementation of the tree removal/replacement activity as set forth in the STCP.

v. The STCP shall document standard details for tree protection and tree planting in compliance with the Administrative Standards.

vi. The STCP shall document compliance with the parking and landscape requirements in compliance with the Administrative Standards.

vii. The STCP shall document all trees planted to bring the tree canopy to a minimum 30% canopy coverage threshold.

b. *Landmark Trees.*

i. The destruction or removal of Landmark Trees pursuant to this Section shall be permitted only if said Landmark Tree is: (1) located within the building footprint of the proposed construction as permitted by the Town of Carl, or (2) outside of the permitted building footprint, and the Town of Carl determines that the permitted land disturbance or construction activity will require the removal of said Landmark Tree based on Section 22-258 below.

ii. All Landmark Trees removed pursuant to section (i) above shall be replaced by the planting of a new tree(s) on the property of a comparable species and with a canopy potential of 150% of the canopy of the Landmark Tree to foster the enhancement of the tree canopy. If, however, the Town determines that replacement is not practical based upon: (1) the size and configuration of the property; (2) the Tree Canopy of common areas adjacent to the property; or (3) other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic on and adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential replacement; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the Town; or generally recognized good forestry practices, payment may be made into the Town Tree Bank in lieu of replacement planting. The compensation for the lost Tree Canopy shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

c. *Boundary Trees.*

i. The STCP shall document the protection of Boundary Trees in accordance with Section 22-254(b) of this article.

d. *Protected Trees.*

i. The removal or destruction of Protected Trees, where said removal or destruction in conjunction with all proposed removal or destruction as set forth in the STCP will not cause the Tree Canopy to fall below the Canopy Requirements, shall be permitted.

ii. The removal or destruction of Protected Trees on property not meeting the Canopy Requirements, or property on which all proposed removal or destruction of as set forth in the STCP will cause the Tree Canopy to fall below the Canopy Requirements, shall be permitted only if said Protected Tree

Page 141 of 596is: (1) located within the building footprint of the proposed construction as permitted by the Town of Carl, or (2) outside of the permitted building footprint, and the Town of Carl determines that the permitted land disturbance or construction activity will require the removal of said Protected Tree based on Section 22-258 below.

iii. All trees removed pursuant to section (ii) above shall be replaced by the planting of a new tree(s) on the property of a comparable species and canopy potential. If, however, the Town Arborist determines that replacement is not practical based upon: (1) the size and configuration of the property; (2) the Tree Canopy of common areas adjacent to the property; or (3) other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential replacement; whether the tree contributes to meeting any of the requirements set forth in this Ordinance or other requirements set forth by the Town; or generally recognized good forestry practices, payment may be made into the Town Tree Bank in lieu of replacement planting. The compensation for the lost Tree Canopy below the Canopy Requirements shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

c. Buffer Trees.

i. The removal or destruction of Buffer Trees shall be permitted only if the Town Arborist determines that the removal of said Buffer Tree is warranted based upon: (1) the size and configuration of the property; (2) the condition of the Buffer Tree; (3) the Tree Canopy of common areas adjacent to the property; or (4) other factors creating undue hardship for the applicant including but not limited to: pedestrian or vehicle traffic adjacent to the property; the configuration of buildings, structures and utilities on or adjacent to the property; cost effectiveness of potential alternatives to tree removal; whether the tree contributes to meeting any of the requirements set forth in this article or other requirements set forth by the Town; or generally recognized good forestry practices.

ii. For removal or destruction of Buffer Trees approved pursuant to (c)(i) above, which removal or destruction, in conjunction with all tree removal set forth in the STCP, will not cause the Tree Canopy to fall below the Canopy Requirements, a Tree Removal Permit shall be issued.

iii. For removal or destruction of Buffer Trees approved pursuant to (c)(i) above, on property not meeting the Canopy Requirements, or property on which the removal or destruction of the Buffer Tree, in conjunction with all tree removal set forth in the STCP, will cause the Tree Canopy to fall below the Canopy Requirements, all Buffer Trees shall be replaced by the planting of a new tree(s) within the minimum required yards/setback of the property of a comparable species and canopy

potential. If, however, the Town of Carl determines that replacement is not practical based upon the factors set forth in section (c)(i) above, payment may be made into the Town Tree Bank in lieu of replacement planting. The compensation for the lost Tree Canopy below the Canopy Requirements shall be calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, Canopy and Cost Assignment.

f. Payment/Assurances Required.

i. A Tree Removal Permit/STCP Approval shall not be issued hereunder until both: (1) payment of any required amounts have been received by the Town Tree Bank, and (2) the Town has been provided adequate assurances of any required canopy replacement.

g. Permit Fee Incentive.

i. Any applicant required to submit and receive an approved STCP pursuant to this Section 22-256, who shall present a plan which increases the existing Tree Canopy on the property, beyond the requirements by this Ordinance, may receive a credit against the Permit Fees required to be paid for the project defined in the STCP in an amount equal to $\frac{1}{3}$ of the value of the increased Tree Canopy as calculated on a square foot lost/replaced basis as set forth on Exhibit "A," Table 2, TOWN OF CARL, Georgia, Code of Ordinances

Page 142 of 596Canopy and Cost Assignment. Such reduction of fees, however, shall not exceed 50% of the amount of the Permit Fees required for the project as defined in the STCP.

h. Field Verification.

i. The Qualified Professional submitting the STCP shall field verify the accuracy of the STCP prior to submittal.

ii. A Qualified Professional shall certify successful compliance with the terms of the approved STCP to the Town prior to issuance of a Certificate of Occupancy for the permitted property.

iii. The Town Arborist shall validate submitted STCPs for field accuracy, and compliance as he or she deems appropriate.

iv. In addition to all other provisions of this article, and where allowed by law, submission of an inaccurate STCP or inaccurate certification of compliance with a STCP shall cause the submitting Qualified Professional to be removed from the approved list maintained by the Town Arborist for a period of not less than ninety (90) days.

Sec. 22-257. Boundary Tree Protection.

a. Prior to the issuance of a Tree Removal Permit pursuant to this Section, funds shall be deposited into an account established by the Town in an amount determined by the Town Arborist to be sufficient to offset the removal and replacement costs of the Boundary Tree. Notice shall be provided to the property owner whose property contains the Boundary Tree which notice shall include notice of the deposited funds and a copy of the Boundary Tree provisions of this article.

b. In establishing the escrow amount required pursuant to Section (a) above, the proposed replacement tree upon which payment shall be computed shall be a comparable species and size potential to the Boundary Tree, shall be ecologically compatible with the intended growing site, and at maturity shall fully mitigate the loss of the entire canopy area of the Boundary Tree.

c. For the purposes of the Ordinance, credit will be granted to applicants for the entire Tree Canopy of a Boundary Tree protected hereunder.

d. At any time prior to a determination authorizing the return of the escrow funds to the applicant pursuant to Section (e) below, if the property owner whose property contains the Boundary Tree ("Petitioner") contends that the permitted activity has caused the Boundary Tree to fail to survive or be in a state of irreversible decline, the Petitioner may petition the Town Arborist for the payment of the escrow funds to be utilized for the removal and replacement of the Boundary Tree. Upon receipt of such petition, notice of the petition shall be provided to the applicant hereunder at the address provided at the time of the Tree Removal Permit application, or at any alternative address subsequently designated by the applicant to the Town Arborist in writing, via first class and certified mail. Within thirty (30) days of mailing of the notice, the Town Arborist shall make a determination as to whether the Boundary Tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Notice of the decision shall be provided to the Petitioner and the applicant by certified and first class mail as set forth above. Either party may appeal the Town Arborist's determination pursuant to Section 13 of this Ordinance. Should the Town Arborist determine that the Boundary Tree failed to survive or is in a state of irreversible decline due to the permitted activity, and no appeal has been timely filed, or the applicant has fully exhausted his or her appellate rights, the escrow funds shall be paid to the Petitioner to offset any costs incurred in removal and replacement of the Boundary Tree. The Petitioner's rights pursuant to this section may not be exercised more than one (1) time in any eighteen (18) month period.

e. After five (5) years from the date of the payment of the escrow funds, unless otherwise disbursed pursuant to section (d) above, the applicant shall have the right to petition the Town Arborist for the return of all escrow funds held for the Boundary Tree. Notice of the applicant's petition shall be provided to the property owner whose property contains the Boundary Tree by first class and certified mail at the address of the property containing the Boundary Tree, and at the address set forth in the tax digest regarding the property. Within thirty (30) days of mailing of the notice, the Town Arborist shall make a determination as to whether the

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Page 143 of 596Boundary Tree has failed to survive or is in a state of irreversible decline due to the permitted activity. Notice of the decision shall be provided to the applicant and the property owner by certified and first class mail as set forth above. Either party may appeal the Town Arborist's determination pursuant to Section 22-263 of this article. Should the Town Arborist determine that the Boundary Tree has not failed to survive or is not in a state of irreversible decline due to the permitted activity, and no appeal has been timely filed, or the property owner

has fully exhausted his or her appellate rights, the escrow funds shall be paid to the applicant.

f. Any funds not collected by either an affected property owner or the applicant within a period of five (5) years and six (6) months of the establishment of the escrow fund shall be deposited in the Town Tree Bank.

g. No party shall be entitled to receive interest on any escrow funds required pursuant to this provision.

Sec. 22-258. Tree Removal and Replacement in Conjunction with Tree Removal Permit.

a. The removal or destruction of any tree where approval is required shall only be approved by the Town of Carl, if the following conditions are met:

i. Unavoidable site modifications resulting from grading, utility work, and construction activities will result in destruction or irreparable damage to the tree; and

ii. Site plan modifications to prevent destruction or irreparable damage to the tree are impossible or unduly burdensome on the applicant.

Sec. 22-259 – 260 Reserved.

Sec. 22-261. Enforcement.

a. The Director of Administration or his or her designated agents shall enforce of Community to the terms of this article.

b. No Certificate of Occupancy shall be issued on any property without compliance with the terms of this article.

c. Examples of violations shall include, but not be limited to:

i. Land disturbance or building construction without a permit.

ii. Improperly installed or maintained tree protection.

iii. The removal of applicable trees prior to the issuance of a permit.

iv. Non-approved encroachment of tree protection zones.

v. Other violations of the terms, provisions and standard of this article established herein.

d. Notices of violations, the issuance of stop work orders and citations shall be in accordance with the Code and Ordinances of the Town, Georgia.

e. Where it is deemed necessary, the Director of Administration shall require sureties to assure compliance to the terms, conditions and standards of this ordinance.

Sec. 22-262. Fines and penalties.

a. Any person, firm, corporations or other entity violating any of the provisions of this article shall be liable for a fine. Each calendar day a violation exists shall be considered a separate offense. There are no maximum limitations to the accrual of fines. Each offense shall further be subject to a maximum of six (6) months imprisonment.

b. Each owner of any property wherein a violation exists shall be jointly and severally responsible for said violation.

Page 144 of 596c. Removal of a Tree protected under the terms of this article without compliance with the terms hereof shall result in an assessment for the replacement of the lost canopy in the amount of three (3) times the value of the lost Tree Canopy calculated in accordance with Exhibit "A," Table 2, Canopy and Cost Assignment, being assessed against the person causing the removal of the tree.

d. The jurisdiction for any violations hereunder shall be in the Town Municipal Court.

Sec. 22-263. Appeals.

a. Any applicant under this article aggrieved by an action of the Town Arborist, or any adjacent property owner directly impacted by a decision, may appeal and be heard by the Town Tree Authority Board in accordance with the rules and regulations as set forth by the Code of the Town, and said Board.

b. All appeals, pursuant to this section, must be filed in writing with the Town of Carl within thirty (30) days from the date of the decision or action from which the aggrieved party appeals. All appeals must be filed on forms, which can be obtained at the Town of Carl.

c. Appeals shall only be granted for errors of interpretation, application, or where the unique natural features of the site are such that it is impractical or impossible to apply the terms, conditions or standards of these regulations resulting in an undue hardship to the property owner.

d. Any person aggrieved by an action of the Town Tree Authority Board as it relates to this article may appeal within 30 days to the Superior Court of Barrow County Georgia by writ of certiorari.

Sec. 22-264. Effective date.

This article shall become effective upon adoption by the Mayor and Council.

Secs. 22-265—22-280. Reserved.

ARTICLE X. STANDARDS FOR OUTDOOR WATERING OF LANDSCAPE

Sec. 22-281. Restriction on outdoor water of landscape.

Outdoor watering for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants may occur only between the hours of 4:00 p.m. and 10:00 a.m.; provided, however, that this limitation shall not create any limitation upon the following outdoor water uses:

- (A) Commercial raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or poultry; the commercial production or storing of feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, fowl, or animals; or the commercial production of aquacultural, horticultural, dairy, livestock, poultry, eggs, and apiarian products or as otherwise defined in O.C.G.A. § 1-3-3;
- (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. § 31-3-5.2 and applicable local board of health

regulations;

(D) Use of reclaimed waste water by a designated user from a system permitted by the Environmental Protection Division of the Georgia Department of Natural Resources to provide reclaimed waste water;

(E) Watering personal food gardens;

(F) Watering new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation;

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Page 145 of 596(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) Watering horticultural crops held for sale, resale, or installation;

(K) Watering athletic fields, golf courses, or public turf grass recreational areas;

(L) Installation, maintenance, or calibration of irrigation systems; or

(M) Hydroseeding.

Sec. 22-882. Enforcement.

(a) No person shall use or allow the use of water in violation of the restrictions on outdoor water use contained in ordinance.

(b) The director of chief of police shall be the enforcement authority for this article.

(c) Criminal and alternative penalties. 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.

Sec. 22-283. Repealer.

All ordinances or parts of ordinances in conflict with this article are repealed.

Sec. 22-284. Effective date.

This article shall become effective upon adoption by the Mayor and Council.

Chapter 26 FINANCE AND TAXATION

ARTICLE I. IN GENERAL

Secs. 26-1—26-20. Reserved.

ARTICLE II. PURCHASING

Sec. 26-21. Introduction.

(a) (b) (c) Purchasing is the procurement of supplies, equipment and services at the lowest prices consistent with the quality needed for the effective operations of the departments of the Town of Carl. This procurement is an important function of the Town, and for any purchasing department to be truly effective, there must be full cooperation between all departments. Serving the needs of each department will be the foremost consideration

of the purchasing department. However, to obtain the greatest value for every dollar spent it is necessary to follow a set of procedures when purchases are made.

The procedures outlined are to be used by all Town employees in requesting and purchasing equipment and supplies.

Changes will be issued as new procedures are approved.

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Page 146 of 596 **Sec. 26-22. Office of purchasing agent.**

(a) There is hereby created the position of purchasing agent, who shall be the Town's principal public purchasing official.

(b) The purchasing agent shall be Town clerk or their designee. In the case of committees appointed by mayor and council, the committee chairperson is to act in the capacity of designee of the purchasing agent with all the responsibility and authority of the duly appointed purchasing agent.

Sec. 26-23. Objectives.

(a) To conduct Town business in such an open manner that potential vendors will be impressed by the fairness of the system and thus be encouraged to furnish competition which will ensure that the Town will secure the best product at the lowest price at all times.

(b) To encourage competitive purchasing.

(c) To develop and maintain an adequate supply of materials, services and supplies as required.

(d) To give due consideration to ethical and quality standards and also to real value rather than price alone.

(e) To establish and build good relations with suppliers and departments.

(f) To discourage, as far as possible, any procedure other than that of competitive purchasing.

(g) To purchase the highest quality in supplies, equipment and contractual services at the least expense.

Sec. 26-24. Powers and duties of the purchasing agent.

(a) Observe and enforce the procedures outlined in this ordinance.

(b) Procure for the Town the highest quality in supplies and services at the least expense.

(c) Supervise and be held responsible for a decentralized purchasing system, whereas department heads have purchasing authority.

(d) Encourage competitive bidding at all possible times.

(e) Explore the possibilities of buying in bulk to take full advantage of discounts.

(f) Prepare written specifications for supplies, equipment and services as required. Specifications shall be developed with information available through governmental and private sources and in cooperation with Town departments.

(g) Prescribe and maintain such forms as necessary for the operation of the purchasing department.

(h) Maintain such files as necessary to the operation of the purchasing department in an organized manner.

(i) Authority to declare vendors who default on their quotations irresponsible and to disqualify them from

receiving any business from the Town for a specified period of time.

(j) Authority to remove a bidder from bid list under certain conditions.

(k) Obtain all federal and state tax exemptions to which the Town is entitled.

(l) Investigate and report any possibilities of collusion.

(m) Join with other governmental agencies in cooperative purchasing when it is for the best interest of the Town.

(n) Keep abreast of current developments in the field of purchasing.

(o) Advise and assist in formulation of policies concerning purchasing.

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Page 147 of 596(p) Responsible for the disposal of Town property declared surplus. No Town employee shall dispose of Town property by trade-in or otherwise without first consulting with the purchasing agent. Departments having property that is no longer needed should submit a description of such to purchasing.

Sec. 26-25. Functions of the departments.

(a) Departments should plan their work so that "rush orders" and emergencies will be held to a minimum.

Requests should be forwarded to the purchasing department far enough in advance to allow sufficient time for delivery.

(b) Departments should assist the purchasing department by suggesting the names of vendors that have access to particular items being requested, especially items of a technical nature. However, the purchasing department is in no way confined to the vendors suggested. The purchasing department maintains a list of vendors and any responsible firm may be added to that list upon application by telephone or mail.

(c) The Town is not obligated to purchase equipment or accessories that are delivered for use on a "trial" basis.

(d) No department has the authority to order directly from a vendor or negotiate purchases in excess of \$500.00.

(e) No Town employee shall purchase supplies, material or equipment of any kind for personal use.

(f) Department heads will be called upon to assist in writing specifications for bids. Specifications should not be written which are considered "closed" (written around one specific brand). Brand names, model numbers, etc., may be submitted as a guideline as to the type and quality of merchandise desired. However, the wording "or approved equal" will always be added so as not to discriminate against any vendor's merchandise. Competition must be kept in mind throughout the writing of specifications.

Sec. 26-26. Purchasing procedures.

(a) *Based on dollar amount.* The purchasing procedures to be followed by the Town based on the dollar amount of the purchase are as follows, unless under state contract (Note: these procedures apply on a per item basis); state contract bidding should be used if available.

(1) (2) Up to \$500.00 and line item budgeted—Direct purchase by the purchasing agent.

\$500.00 up to \$2,000.00 and line item budgeted—Minimum of three e-mail or fax quotations required.

Results of quotations and award to be recorded and filed.

(3) \$2,000.00 up to \$3,500.00 and line item budgeted—Minimum of three written quotations submitted.

Results of quotations and award to be recorded and filed.

(4) \$3,500.00 up to \$10,000.00 and budgeted—Minimum of three written quotations. Purchasing agent or their designee shall make a recommendation to Town council and council shall award the bid. Results of written quotations and award shall be recorded and filed.

(5) Above \$10,000.00 and budgeted—Requires solicitation of advertised formal sealed bids. Purchasing agent or their designee makes recommendation to Town council who awards bid. Results of bids and awards are to be recorded and filed.

(6) Non-budgeted items approved by Purchasing Agent in amounts up to \$2,500.00. Amounts above \$2,500.00 require approval of mayor and council. Once approval has been granted, compliance with procedures (1) through (5) is required, (whichever are applicable.)

(7) Budgeted items—Direct purchase from state contract by department heads with approval of purchasing agent.

(8) Professional services—Mayor and Town council may appoint vendors for professional services annually, based upon qualifications and experience of the respective vendors. These professional services shall include, but not be limited to, auditor, attorney, solicitor, judge, judge pro-tem, engineers, artistic personnel, architects and surveyors.

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Page 148 of 596(9) Council review—Items over \$1,000.00 not otherwise required to be awarded by council and purchasing agent shall bring those items forward for discussion at Town council work session meetings.

(b) *Bond and insurance requirements.*

(1) Public road project contracts over \$5,000.00 require performance bond and payment bond as well as public liability and property damage insurance bonds or policies, and bonds to maintain in good condition; such completed construction for a period of not less than five years, pursuant to O.C.G.A. § 32-4-119. The amount of insurance depends on the size of the project.

(2) Public works contracts over \$40,000.00 must provide a bid bond, performance bond, and payment bond in accordance with O.C.G.A. §§ 13-10-1 and 13-10-2.

(3) (4) Any contractor entering a contract with the Town must carry a worker's compensation policy at the minimum statutory limit, unless he is exempt under O.C.G.A. § 34-9-1 et seq.

Licensed professionals contracting with the Town for services in the amount of \$40,000.00 or more must provide professional liability coverage of \$1,000,000.00.

Sec. 26-27. Formal bids.

(a) *Bid requirements.*

(1) *Public roads.* All contracts for public roads exceeding \$20,000.00 shall be let by competitive sealed bids after advertising same once a week for two weeks prior to the opening of sealed bids, all in accordance with O.C.G.A. §§ 32-4-90 through 32-4-123. Provided, however, that contracts listed in O.C.G.A. § 32-

4-113 may be let without advertising and without competitive sealed bids.

(2) *Public works.* All contracts exceeding \$10,000.00 for public works other than public roads shall be let by competitive sealed bids after advertising same for a minimum of three weeks utilizing newspaper, and transmitting invitation to bid directly to potential bidders, prior to the opening of sealed bids and posting a written notice at Town hall for the same length of time.

(3) *Utility system contracts.* Contracts for utility system work, as defined in O.C.G.A. § 43-14-2(17), for which costs exceed \$100,000.00 must be performed by a state licensed utility contractor. Bidders for utility contracting must have a valid license pursuant to O.C.G.A. § 43-14-8.2 or intend to have the work performed by a state licensed contractor.

(4) *Other contracts.* All other contracts not hereinbefore provided for shall be let by competitive sealed bids after advertising same once a week for two weeks prior to the opening of the sealed bids.

Sec. 26-28. Purchasing orders required.

(a) Except as provided herein in the case of an emergency, no officer or employee of the Town shall request any merchant, dealer or other vendor to deliver goods to the Town or any department or officer or employee thereof, without first obtaining a regular purchase order that has been approved by the purchasing agent.

(b) All purchase orders must be executed by the purchasing agent or his designee.

(c) Any purchases made without obtaining a purchase order in advance shall be disallowed and payment refused.

Vendors, merchants and dealers will be deemed to have dealt with any employee or officer who does not have a purchase order at their own risk.

Sec. 26-29. Emergency purchases.

In all cases where there is immediate need for any materials, supplies, goods, wares or merchandise by any department, such department must advise the purchasing agent, and if he cannot be located, the officer or employee must immediately notify the mayor or finance officer or chairman of the committee having jurisdiction over that subject matter for action. In the event none of the above can be reached and an emergency purchase of the item is

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Page 149 of 596absolutely necessary, such purchase must be reported to the purchasing agent and finance officer within 24 hours of such purchase.

Sec. 26-30. Discretion on purchases.

In all purchases where quality as well as price and service is involved, the purchasing agent shall exercise discretion in making the purchase. In all cases where patented items or special purpose items are requested, the purchasing agent at his direction has the discretionary authority to decide whether similar products of equal quality and at a lower price shall be ordered in lieu of items requested.

Sec. 26-31. Sale of Town property.

(a) No property belonging to the Town shall be sold except after approval of the mayor and Town council.

(b) When any property owned by the Town has become surplus, unserviceable or useless, the head of the department in charge of the property shall certify to mayor and Town council that such property is no longer useful and should be disposed of. Any property to be sold shall be sold at public sale either by sealed bid or public outcry to the highest bidder for cash or certified funds. Nothing herein shall prevent the Town from donating or exchanging such surplus property with other governmental units of quasi-governmental units.

Secs. 26-32—26-55. Reserved.

ARTICLE III. PROPERTY TAXES

Sec. 26-56. Ad valorem tax; rate.

An annual ad valorem tax shall be established by ordinance of the Town council. Such tax shall be a lien against each and every species of property subject to taxation in the Town and shall be collected from the owners thereof as provided by law. The current ad valorem tax rate is zero (0).

(Code 1988)

Sec. 26-57. Assessment.

The assessment shall be 40 percent of the fair market value on each and every piece of property within the corporate Town limits in accordance with the laws of the state. Fair market value shall be determined in accordance with the current year's tax assessment rendered by the county.

State law reference(s)—Assessment of tangible property, O.C.G.A. § 48-5-7; determination of fair market value, O.C.G.A. § 48-5-352.

Sec. 26-58. Due dates; penalties; collection.

The Town shall contract with the county to collect the ad valorem taxes due the Town at the same time the county collects its own ad valorem taxes, now and hereafter. The Town will adopt a millage rate by ordinance in time to conform to the county's requirements. The county will conduct all collection actions, including fi. fa., and the county will be entitled to keep any fines or interest that may arise.

State law reference(s)—Collection and payment in installments, O.C.G.A. § 48-5-23; county and municipality may contract for county to collect taxes for municipality, O.C.G.A. § 48-5-359.1; establishing millage rate,

O.C.G.A. § 48-5-32.1.

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Page 150 of 596**Secs. 26-59—26-81. Reserved.**

ARTICLE IV. OCCUPATION, PROFESSION AND BUSINESS TAXES

Sec. 26-82. Required; occupation tax required for business dealing in the Town.

(a) (b) Each person engaged in any business, trade, profession or occupation in the Town, whether with a location in the Town or in the case of an out-of-state business with no location in the state exerting substantial efforts within the state pursuant to O.C.G.A. Section 48-13-7, shall pay an occupation tax for the business, trade, profession or occupation, which tax and any applicable registration shall be displayed in a conspicuous place

in the place of business if the taxpayer has a permanent business location in the Town. If the taxpayer has no permanent business location in the Town, such occupational tax registration shall be shown to the Town clerk, code enforcement officer and/or police officers of the Town, upon request.

The following businesses are not covered by the provisions of this article, but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the state or by act of local law.

- (1) Those businesses regulated by the Georgia Public Service Commission.
- (2) Those electrical service businesses organized under O.C.G.A. Chapter 3 of Title 46.
- (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.
- (4) Cooperative marketing associations governed by O.C.G.A. Section 2-10-105.
- (5) Insurance companies governed by O.C.G.A. Section 33-8-8.
- (6) Motor common carriers governed by O.C.G.A. Section 48-5-355.
- (7) Agricultural products and livestock raised in the state governed by O.C.G.A. Section 48-5-356.
- (8) Depository financial institutions governed by O.C.G.A. Section 48-6-93.
- (9) Facilities operated by a charitable trust governed by O.C.G.A. Section 48-13-55.
- (10) Persons engaged in recreation activities sponsored by the parks and recreation department of the Town.
- (11) The following classes of persons may peddle, conduct business, or practice the professions or semi-professions without paying an occupation tax, administrative fee, or regulatory fee for the privilege of so doing:

a. Any disabled veteran of any war or armed conflict in which any branch of the Armed Forces of the United States engaged, whether under United States command or otherwise;

b. Any blind person; or

c. Any veteran of peace time service in the United States armed forces who has a physical disability incurred during the period of such service;

provided such person receives a certificate of exemption issued by the commissioner of veterans service, has furnished proof of disability, and provides documentation that the person making application is a resident of this state and that the income of such person is such that he or she is not liable for the payment of state income taxes, subject to O.C.G.A. Section 43-12-1, et seq.

Sec. 26-83. Definitions.

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

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Page 151 of 596 *Administrative fee* means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.

Business means any business, trade, occupation, profession, avocation or calling of any kind for gain or

profit, directly or indirectly.

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

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, or whose employer issues to such individual for the purposes of documenting compensation and IRS Form W-2, but not an IRS Form 1099.

Engaged in business means when any person performs any act of selling any goods or service or solicits business or offers goods or services for sale for payment in an attempt to make a profit, including the sales or services of the character as made by a wholesaler or retailer or involved in any of the functions performed as a manufacturer, either as an owner, operator or agent in any business, trade, profession or occupation within this Town.

Location or office means 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. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor or the agent of the owner or lessor unless the real property's owner, lessor or agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any business, profession or occupation at such site.

Number or employees shall be computed on a full-time position basis. An employee who works 40 hours or more per week shall be considered a full-time employee. Employees who work less than 40 hours per week shall be considered for the purpose of this ordinance as a part-time employee. Each part-time employee shall be considered to be equal to one-half of a full-time employee. The total number of employees shall be the sum total of all full-time employees plus all part-time employees rounded to the next whole number.

Person includes sole proprietors, corporations, partnerships, nonprofit or any other form of business organization (but specifically excludes charitable nonprofit organizations which utilize 100 percent of their proceeds for charitable purposes).

Practitioner of profession or occupation means one who by state law requires state licensure regulation such profession or occupation. The term does not include a practitioner who is an employee of a business if the business pays an occupation tax.

Sec. 26-84. Administration.

The Town clerk shall administer and enforce the provisions of this chapter for the levying and assessment and collection of the occupational tax and penalties. the clerk shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with the chapter or other laws of the Town and state, or the constitution of the state or the United States, for the administration and enforcement of the provisions of this chapter and the collection of the occupational tax fees.

Sec. 26-85. Occupation tax levied; restrictions.

A successor is named: North American Industry Classification System (NAICS).

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Page 152 of 596The taxation rates shall be based upon NAICS class amounts, as adopted. The homebased occupation tax shall be an annual tax \$100.00, plus a \$25.00 administrative fee. Commercial business tax shall be an annual tax calculated as specified in the NAICS Tax Class Codes, or \$125.00, whichever is greater of the calculations.

Sec. 26-86. Paying occupation tax on business with no location in state.

Registration and assessment of an occupation tax is imposed on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in the state is in the Town and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the Town for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the jurisdiction of the Town.

Sec. 26-87. Each line of business to be identified on business registration.

The business registration of each business operated in the Town shall identify the dominant line of business that the business conducts.

Sec. 26-88. The number of businesses considered to be operating in the Town.

Where a person conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of occupation tax.

Sec. 26-89. Professionals as classified in state law, paragraphs 1 through 18.

Practitioners of professions as described in O.C.G.A. Section 48-13-9(c)(1), paragraphs (1) through (18) shall pay their tax based on the number of employees as all other businesses.

Sec. 26-90. 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.

Sec. 26-91. Purpose and scope of tax.

The occupation tax levied in this article 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. Sections 48-13-5—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.

Sec. 26-92. When tax due and payable; effect of transacting business when tax is delinquent.

(a) Each occupation tax shall be for the calendar year unless otherwise specifically provided. The certificate and occupation tax shall be due and payable annually within 30 days of January 1st of each year and shall, if not paid by May 1st of each year, be subject to a penalty of ten percent of the tax or fee due. On any new profession, trade or business being in the Town before July of any year, the certificate and tax shall be delinquent if not obtained immediately upon beginning business and a ten percent penalty imposed if not paid within ninety days from the date business is commenced. When any person commences business on or after

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Page 153 of 596(b) July 1st in any year, the occupation tax for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year. Any certificate not renewed prior to May 1st shall be suspended.

In addition to other remedies available to the Town for the collection of occupation taxes from persons subject to the tax who fail or refuse to pay the tax, the court for the Town is authorized to impose a civil fine for failure to pay the occupation tax. Such fine shall not exceed \$500 and may be enforced by the contempt power of the court.

Sec. 26-93. Occupational tax registration to be displayed.

All persons shall exhibit and display the occupation tax registration issued to them in some conspicuous place in their business establishment. Any transient person doing business within the Town, and liable for occupational tax within the Town, shall carry such registration either upon his person or in any vehicle or other conveyance which he uses in such business; and such person shall exhibit the registration to any authorized enforcement officer of the Town when so requested.

Sec. 26-94. License transferable.

All occupational tax registrations shall be transferable for a business moving from one location to another if such person or business notifies the Town clerk in writing of such new address no later than the day of moving.

Sec. 26-95. Duration of occupational tax.

Each occupational tax issued under this article shall automatically expire on December 31st of the year of its issuance unless otherwise provided in this article.

Sec. 26-96. 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 O.C.G.A. Title 43 shall provide evidence of

proper and current state licensure before the Town 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 or have the license available for review at the request of a Town enforcement official.

Sec. 26-97. 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 Town business registration, show evidence that such requirements have been met.

Sec. 26-98. Penalty for violation.

Any person violating any provision of this chapter shall, upon conviction before the Town judge, be punished in accordance with Section 26-92.

Sec. 26-99. Amendment, repeal of provisions.

This chapter shall be subject to amendment or repeal, in whole or in part, at any time; and no such amendment or repeal shall be construed to deny the right of the Town to assess and collect any of the taxes or other charges prescribed. An amendment may increase or lower the amounts and tax rates of any occupation. 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.

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Page 154 of 596 **Sec. 26-100. Liability of officers and agents; registration required; failure to obtain.**

All persons subject to the occupation tax levied pursuant to this chapter shall be required to obtain the necessary registration for the business as described in this chapter; and in default, 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 Town after January 1st of each year shall likewise obtain the registration before commencing business; and any person transacting or offering to transact in the Town any of the kinds of business, trade, profession or occupation without first having so obtained such registration shall be subject to penalties provided for failure to do so.

Sec. 26-101. [Taxes levied under such prior ordinance have not been paid in full.]

This chapter does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in such ordinance or ordinances, or failure to comply with any other provisions of this chapter, shall continue and remain in full force until such tax, regulatory fee or assessment shall be fully paid.

Sec. 26-102. Provisions to remain in full force and effect until changed by council.

This chapter shall remain in full force and effect until changed by amendments adopted by the Town council.

All provisions relating to any form of tax levied in this article shall remain in full force and effect until such taxes have been paid in full.

Sec. 26-103. Appeals.

Any person who desires to contest the determination of the Town clerk with respect to any provision of this chapter shall so notify the mayor in writing within ten days of such determination, specifying the reasons such person believes the determination of the clerk is incorrect. The mayor shall thereupon notify such person of the time and place of the next meeting of the council, or of an occupational tax review board consisting of not less than three members of the council; and such aggrieved person may appear at such time and place to present arguments as to why the determination of the clerk is incorrect. The determination of the council or the review board appointed by the council, as the case may be, with respect to the contested determination of the clerk shall be binding and conclusive upon such person.

Sec. 26-104. [Public hearing—Rate increase.]

The Town council shall conduct at least one public hearing before adopting any ordinance or resolution which will set or increase the rate of occupation tax as set forth in this chapter.

Sec. 26-105. [Severability.]

In the event any portion of this article shall be declared or adjudged invalid or unconstitutional, it is the intention of the Town council of the Town of Carl that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the article.

Secs. 26-106—26-143. Reserved.

ARTICLE V. MALT BEVERAGES, WINE AND DISTILLED SPIRITS

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Page 155 of 596 Sec. 26-144. Imposition of excise tax; rates.

In addition to the malt beverage, wine retail and distilled spirits license fees, there is hereby assessed an excise tax to be paid by the licensed wholesale dealer in malt beverages, wine and distilled spirits based on sales, in the following amounts:

(1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons; and exemptions shall be as provided by law;

(2) (3) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces; and exemptions shall be as provided by law;

On the first sale or use of wine by the package, a tax of \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter; and exemptions shall be as provided by law.

(4) Distilled spirits meaning any alcoholic beverage containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines. Ordinance No. 05-2008 also provides to allow for the imposition and collection of an excise tax on distilled spirits either by sale on premises consumption or by sale of packages. The maximum excise tax allowed by the State of Georgia is the amount to be imposed and collect by the Town.

State law reference(s)—Local excise tax on malt beverages, O.C.G.A. § 3-5-80 et seq.; local excise tax on wine, O.C.G.A. §§ 3-6-40, 3-6-60, 3-6-70 et seq.

Sec. 26-145. Reports; remittance.

The excise taxes provided for shall be paid by such dealer on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of within the Town.

State law reference(s)—Collection and enforcement of excise tax on malt beverages, O.C.G.A. § 3-5-84; collection of excise tax on wine, O.C.G.A. § 3-6-60(b).

Chapter 30 FLOODPLAIN MANAGEMENT/FLOOD DAMAGE PREVENTION¹⁵

See Appendix B.

Chapter 38 LICENSING AND MISCELLANEOUS REGULATIONS¹⁶

¹⁵ State law reference(s)—Stormwater, sewage collection and disposal systems authorized under home rule powers, Ga. Const. art. IX, § II, ¶ 3(a)(6); Metropolitan River Protection Act, O.C.G.A. § 12-5-440 et seq.

¹⁶State law reference(s)—Persons engaged in profession or business required to be licensed under Title 43 to provide evidence of licensure before county or municipality issues business license, O.C.G.A. § 36-60-6; collection of certain county and municipal taxes by commissioner authorized, O.C.G.A. § 48-2-10; municipal corporations to enact ordinances and resolutions in compliance with Georgia Public Revenue Code (O.C.G.A. § 48-1-1 et seq.), O.C.G.A. § 48-13-27.

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Chapter 38 - LICENSING AND MISCELLANEOUS REGULATIONS

ARTICLE I. IN GENERAL

ARTICLE I. IN GENERAL

Secs. 38-1—38-47. Reserved.

ARTICLE III. MISCELLANEOUS REGULATIONS

Sec. 38-48. Minors prohibited in poolrooms.

It is unlawful for any person who operates a billiard parlor or poolroom in the Town to allow any person under

the age of 16 years of age to enter billiard parlors or poolrooms in the Town, unless accompanied by a parent or guardian.

Sec. 38-49. Handbills.

It shall be unlawful for any person to:

- (1) Post any bills or other advertising matter on any place where he or she has not secured the permission of the owner or manager of the property to do so.
- (2) Place or cause any commercial handbill to be placed within or upon, or under the windshield wiper of any private automobile parked upon any of the public streets or in any public parking area. This shall not preclude the delivery of any handbill to an owner, occupant or person present and in charge of a vehicle willing to accept and receive the handbill.
- (3) Post any bills or other advertising matter upon any permanent or temporary structure or building, pole or tree located on any street, park or public way without first obtaining a permit therefore from the Town clerk.

Secs. 38-50—38-71. Reserved.

ARTICLE IV. PARADES AND DEMONSTRATIONS

Sec. 38-72. Parades; permit required.

It shall be unlawful for any person to participate in, conduct or accompany any organized parade or procession, other than a funeral procession, on the public streets, sidewalks or other public property in the Town unless an application has been previously filed and a permit granted to conduct such parade or procession within the Town.

Sec. 38-73. Application for permit.

An application for permit to conduct or sponsor a parade or procession shall be filed with the chief of police in writing and shall contain the following information furnished by the person in official charge of the proposed parade or procession:

- (1) The name of all organizations or persons organizing or sponsoring the parade or procession;

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Page 157 of 596(2) The purpose of the parade or procession;

- (3) The date and hours of the parade or procession;

- (4) The proposed route of the parade or procession, and its beginning and termination points;

- (5) The number and types of vehicles, marching units and floats to be used in the parade or procession; and

- (6) The number of persons participating in the parade or procession.

Sec. 38-74. Investigation.

The chief of police shall investigate all applications for parade permits, and may issue permits where the information specified in section 38-73 has been furnished, provided the proposed parade or procession is otherwise

lawful and can be held without undue interference with vehicular and pedestrian traffic within the Town, of which circumstances the chief of police shall exercise his or her discretion. A denial of a parade permit may be appealed to the council.

Secs. 38-75—38-98. Reserved.

ARTICLE VI. [FIREWORKS]

Sec. 38-99. [Use of fireworks in the Town Park.]

(a) (b) (c) (d) (e) The Town of Carl asserts the authority delegated to the Town by O.C.G.A., section 25-10-2(d) for the purpose of allowing, under limited circumstances, the use of fireworks within the Town Park. The provisions of this ordinance are mandatory and apply to all use of fireworks within the Town Park.

The use of consumer fireworks, as defined by state law, shall be lawful in the Town Park between the hours of 9:00 p.m. and 10:00 p.m. on July 4, provided the person igniting such fireworks has first obtained a special use permit as provided by O.C.G.A., section 25-10-2(d).

Application for special use permit to discharge fireworks in the Town Park shall be made in person at Town hall for each date such discharge is allowed pursuant to subsection (b) of this section. Incorporated entities wishing to discharge consumer fireworks in the Town Park may make application in their corporate name, provided they designate a responsible adult at least 18 years of age who will be responsible for the transportation to the park and ignition of the fireworks covered by the permit. All applicants and designated dischargers shall be responsible adults at least 18 years of age. All applicants and designated dischargers shall produce, at the time of application, photo identification as required by O.C.G.A., section 25-10-2. The fee for permits shall be \$15.00 and paid at the time of application. Upon submission of an application and payment of the permit fee, the applicant shall be issued a receipt, which shall be taken to and produced at the police department to secure the permit. A maximum of ten permits shall be issued for each date, on a first come, first served basis. No application shall cover more than one date and/or one applicant.

State law prohibits any person under the influence of alcoholic beverages or drugs from discharging fireworks. The police department shall enforce this provision throughout the Town, including those fireworks discharged in the Town Park.

Fireworks shall be discharged in the Town Park only from those areas roped off for such discharge during allowable days and hours of discharge as indicated by subsection (b). Police officers shall monitor the entrance to the discharge area. Only persons holding a discharge permit and one assistant shall be permitted within the discharge area upon presentation of their permit and photo identification. All persons within the discharge area shall cooperate with one another to ensure all permit holders have an equal opportunity to discharge the fireworks covered by their permits. Fireworks discharged at the Town Park shall be pointed toward the lake and away from all persons.

Page 158 of 596(f) (g) (h) (i) Persons discharging fireworks in the Town Park shall be responsible for picking up all trash and debris associated with their activities and disposing of same in a safe, appropriate manner after all fireworks have been discharged.

Permit holders remain legally responsible for fireworks discharged by them and shall, as a condition of permit issuance, indemnify the Town, its officers and employees from injury or property damage resulting from their discharges.

No fireworks shall be discharged in the Town Park except as allowed by this ordinance. No fireworks shall be discharged on the public streets or sidewalks or other public property at any time.

The permit issued for fireworks discharge may be revoked on site by law enforcement officers for any violation of this ordinance or location restrictions established by the Town, as well as failure to follow law enforcement directives. Any person violating the terms of this ordinance may be cited for such violation, and upon conviction, shall be punished as for ordinance violations under the Town's charter; provided that persons discharging fireworks at any location in the Town, including the Town Park, while under the influence of alcoholic beverages or drugs shall be cited under state law and bound over to state court.

Chapter 42 MOTOR VEHICLES AND TRAFFIC¹⁷

ARTICLE I. IN GENERAL

Sec. 42-1. Uniform rules of the road adopted.

(a) *Generally.* Pursuant to O.C.G.A. §§ 40-6-372—40-6-376, 40-6-1—40-6-395 (except for O.C.G.A. §§ 40-6-393—40-6-394) known as the "Uniform Rules of the Road," are hereby adopted as and for the traffic regulations of this Town with like effect as if recited herein.

(b) *Definitions.* The definitions contained in O.C.G.A. § 40-1-1 are hereby adopted as and for the traffic regulations of the Town with like effect as if fully recited herein.

(c) *Penalties.* Unless another penalty is expressly provided by law, every person convicted of a violation of any provision of this article shall be punished as provided in section 1-9.

Sec. 42-2. Insurance requirements.

The provisions of O.C.G.A. §§ 33-34-1 et seq., 36-32-7, 40-2-137, 40-6-10 are hereby adopted by reference and are made a part of this Code as fully as if set out at length herein. A copy of these provisions shall be maintained on file in the office of the Town clerk. Any owner or any other person who knowingly operates or knowingly authorized another to operate a motor vehicle within the Town without effective insurance thereon or without an approved plan of self-insurance as required by the state Motor Vehicle Accident Reparations Act shall, upon conviction, be punished as provided for in section 1-9.

¹⁷State law reference(s)—Municipal authority pertaining to roadways, traffic, traffic control devices, terminals, docks, and parking facilities, Ga. Const. art. 9, § 2, ¶ III(a)(4), (11); uniform vehicle and traffic provisions, O.C.G.A. § 40-6-370 et seq.; municipal court jurisdiction over misdemeanor traffic offenses, O.C.G.A. § 40-

13-21; municipal court jurisdiction over persons operating motor vehicle without valid license or registration, O.C.G.A. §§ 40-13-22, 40-5-124; alternative sentencing for traffic violations, O.C.G.A. § 17-10-3; uniform regulations regarding signs, signals, markings, and other traffic control devices, O.C.G.A. § 32-6-50.

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Sec. 42-3. Traffic, speed, truck, parking and other zones; signs and traffic control devices; schedule.

(a) (b) (c) (d) (e) The police chief or a designee thereof, upon approval by ordinance of the Town council, is authorized to designate and maintain with appropriate traffic control signs, markings and devices after engineering and traffic investigations:

- (1) Speed zones;
- (2) Truck routes and streets to be designated specifically to prohibit various classes of trucks;
- (3) One-way streets and other directional control devices;
- (4) Freight loading and regulations;
- (5) Parking and no parking zones and regulations thereof;
- (6) Stop, yield and other right-of-way signs; and
- (7) Stop signals and other traffic signals.

The police chief or a designee thereof is authorized to issue written orders designating by appropriate traffic control signs, markings and devices after engineering and traffic investigations:

- (1) Pedestrian crosswalks;
- (2) Other safety zones for pedestrians;
- (3) Traffic lanes; and
- (4) Any other device or sign, marking or zone necessary for orderly and safe conditions on the streets of the Town.

The police chief shall maintain or cause to be recorded a current schedule of all traffic rules, regulations and orders under this section, which record shall be available for inspection by the public. For items listed in subsection (a) of this section, this schedule, and any amendments thereto, shall become effective only upon approval thereof by ordinance of the Town council and this schedule is hereby incorporated herein and copies thereof shall be available for public inspection in the office of the Town clerk.

All traffic control signs, signals, devices and markings shall conform to the uniform regulations adopted by the state transportation board. All signs and signals required hereunder for a particular purpose shall, so far as practicable, be uniform as to type and location throughout the Town. All traffic control devices so erected and not inconsistent with the provisions of state law or this Code shall be official traffic control devices of the Town.

Any violation of any traffic zone, marking, sign or other traffic control device established hereunder shall be a

violation of this Code.

Secs. 42-4—42-24. Reserved.

ARTICLE II. VEHICLE REGULATIONS

Sec. 42-25. Vehicle cover required.

No person shall operate or load any vehicle on the public streets and roads of the Town unless the vehicle is constructed, loaded and securely covered so as to prevent any of its load from dropping, escaping or shifting in such a manner as to create a safety hazard or in such a manner so as to litter the streets and roads of the Town.

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Page 160 of 596State law reference(s)—Securing load to prevent danger and litter, O.C.G.A. § 40-6-248.1; securing load to prevent hazard, O.C.G.A. § 40-6-254.

Sec. 42-26. Use of coasters, roller skates, skateboards, nonmotorized two-wheel scooters and similar devices restricted.

(a) (b) (c) (d) (e) No person upon roller skates, roller blades, skateboards, nonmotorized two-wheeled scooters, or riding in or by means of coasters, toy vehicle or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing the person shall be granted all the rights and shall be subject to all duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized by resolution of this Town.

There shall be no such activity on the sidewalks except under such terms and conditions as are expressly allowed by resolution for a designated area.

It shall be unlawful for persons skating or riding as herein provided to gather in crowds, or to create noise or be guilty of any disorderly conduct, or to take hold of or hang on to any automobile or other vehicle, or in any way to interfere with the natural progress of automobiles or other vehicles along and in the streets of the Town, or for two or more persons to join hands while skating on the sidewalk. Any person so skating or riding shall give right-of-way to, and in no way interfere, with persons walking on the sidewalks.

Any person violating any provisions of this section shall be subject to the penalties herein provided for violation of this Code; provided, however, that any offender under the age of 17 years of age shall be dealt with as provided by the state law creating juvenile courts.

The parent of any child and the guardian of the person of any ward shall not authorize or knowingly permit any child or ward to violate any of the provisions of this section.

Secs. 42-27—42-55. Reserved.

ARTICLE III. TRAFFIC REGULATIONS

Sec. 42-56. Penalty for violation.

Any person who shall violate any provision of this article shall, upon conviction be punished as provided in section 1-9.

Sec. 42-57. Temporary traffic regulations.

In cases where traffic upon the streets of the Town may become congested upon occasions of parades, at theaters and other public assemblages where large numbers of vehicles are assembled, the police chief may make temporary rules directing and regulating the traffic in these congested districts, and any person, after being warned of the temporary traffic regulations, who shall violate them shall be liable therefore as for other violations of this Code.

Sec. 42-58. Free flow of traffic; obstruction prohibited.

All persons are prohibited from engaging in driving procedures which obstruct the free flow of traffic in, around, over and through the streets, alleyways and other public ways of the Town. Any person is prohibited from stopping his or her vehicle (except at a stop signal or stop sign, or to honor another driver's right-of-way, or in an emergency situation) in a manner as to obstruct the free and orderly flow of traffic by the maneuver, or to engage in unduly slow driving procedures so as to obstruct the free flow of traffic or to needlessly "circle the block" or dawdle

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Page 161 of 596or make unnecessarily rapid accelerations and decelerations or to in any other manner constitute a traffic nuisance or hazard.

Sec. 42-59. Speed limits established.

(a) No person shall operate any motor vehicle or tractor upon any of the streets and highways of the Town at a greater speed than is reasonable and proper having regard to the width, traffic and use thereof, or so as to endanger the property or life and limb of any person.

(b) Twenty-five miles per hour shall be the maximum speed on all streets or portions of streets within the Town unless otherwise indicated by officially posted signs designating the maximum vehicular speed upon those streets as approved by the Town council.

Sec. 42-60. Traffic signs, signals and markings.

All traffic shall obey and be directed by official traffic control signals, signs and markings erected at street intersections and other locations now or hereafter approved by the Town council.

Sec. 42-61. Tracked vehicles prohibited on streets.

It is unlawful for any person to operate any tracked or other vehicle having metal tracks or wheels upon the Town streets.

Sec. 42-62. Reserved.**Sec. 42-63. Obstruction of view and use by trees and shrubs; notice.**

(a) Any shrubbery, trees, signs and fences within ten feet of any street corner each way from the corner and the diagonal thereof within the Town limits shall be cut or trimmed to a height of not more than 30 inches from the ground by the owner or occupant of the property.

(b) If any person does not comply within ten days of notice to clear blind corners of shrubbery, trees, etc., the

Town shall have the right to remove such obstacles and shall assess the property owner for the cost thereof.

Secs. 42-64—42-84. Reserved.

ARTICLE IV. PARKING REGULATIONS¹⁸

Sec. 42-85. Penalty for violation.

Any person who shall violate any provision of this article shall, upon conviction, be punished as provided in section 1-9.

Sec. 42-86. Vehicles to be parked within marked spaces.

Whenever a space is marked off on any highway for the parking of an individual vehicle, every vehicle there parked shall be parked within the lines bounding that space.

¹⁸State law reference(s)—Parking provisions and procedure, O.C.G.A. § 40-6-200 et seq.; local authority to regulate parking, O.C.G.A. § 40-6-371.

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Page 162 of 596**Sec. 42-87. Parking prohibited at all times in certain locations.**

It is unlawful for the owner or operator of any motor vehicle or other vehicle to park the vehicle in any of the places on the streets and alleys of the Town specifically designated by posted signs indicating the prohibited parking.

Sec. 42-88. Parking prohibited in certain locations, certain days and hours.

It is unlawful for the owner or operator of any motor vehicle or other vehicle to park the vehicle in any of the places on the days and between the hours indicated and specified by posted signs indicating the prohibited parking.

Sec. 42-89. Parking time limited in certain locations, certain days and hours.

It is unlawful for the owner or operator of any motor vehicle, or other vehicle to park the vehicle or allow the vehicle to remain parked in any of the places on the streets and alleys of the Town, at any time on the days and between the hours indicated and specified by posted signs limiting parking time in certain locations on certain days and hours.

Sec. 42-90. Special purpose parking zones established, parking otherwise prohibited.

It is unlawful for the owner or operator of any motor vehicle, or other vehicle to park the vehicle or allow the vehicle to remain parked in any locations on the streets and alleys of the Town established and designated as special purpose parking zones indicated and specified by posted signs approved by the Town council.

Sec. 42-91. Restricted parking.

(a) (b) (c) (d) Parking on the streets of the Town shall be restricted to operable, validly registered, insured and where applicable by state law, inspected, passenger vehicles and passenger vehicle sized or smaller commercial vehicles, except for trailers of any kind.

Vehicles prohibited for parking upon the streets of the Town include, but are not limited to: buses, school buses, tractors, semi-tractors, tow trucks, earth moving equipment, recreational vehicles, flat bed trucks,

moving vans, step vans, dump trucks, hearses, ambulances, limousines, taxicabs or other vehicles for hire, trailers of every kind, any vehicles not validly registered, insured and where applicable by state law, inspected, and any vehicles as now or in the future defined by state law as other than passenger vehicles or passenger cars.

All vehicles may be parked on the residential, commercial, business or professional property of the owner or occupant of the property provided all of the following conditions are met:

- (1) No portion of any vehicle, as restricted herein, shall be parked within five feet of a side or rear lot line.
- (2) No portion of any vehicle, as restricted herein, shall be visible from any point within 50 feet of the property line where such vehicle is located and from a vantage point of up to six vertical feet above the ground or street.
- (3) No portion of any vehicle, shall be parked on any surface other than a prepared surface as defined herein.
- (4) No portion of any vehicle shall be parked upon a front yard.
- (5) No portion of any vehicle shall be used for the purpose of storage or living quarters.
- (6) Parking on any residential street should only occur after all available off-street parking has been filled.

Prepared surface is defined as a surface consisting of one or more of the following: concrete, asphalt, crushed stone or gravel within dimensions as defined by other Town codes.

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Page 163 of 596(e) A minimum fine per day or fraction of a day that any vehicle as restricted herein is parked within the Town limits, in violation of this article, shall be assessed in addition to other fines or punishment upon conviction as provided by section 1-9.

Chapter 46 MUNICIPAL UTILITIES¹⁹

Sec. 46-1 – 47-7. Reserved.

Chapter 50 OFFENSES²⁰

ARTICLE I. IN GENERAL

Secs. 50-1—50-18. Reserved.

ARTICLE II. UNLAWFUL CONDUCT

Sec. 50-19. Disorderly conduct.

It shall be unlawful and shall constitute disorderly conduct for any person in the Town to:

- (1) Act in a violent or tumultuous manner toward another, whereby a reasonable person would be placed in fear of safety for life, limb, or health;
- (2) Place the property of another in serious danger of being destroyed or damaged;

¹⁹State law reference(s)—Local authority over stormwater and sewage collection and disposal systems and development, storage, treatment, purification, and distribution of water, Ga. Const. art. IX, § II, ¶ III(a)(6), (7);

acquisition, operation, maintenance, and regulation of sewage systems, O.C.G.A. § 36-34-5; restrictions on enforcing unpaid charges, O.C.G.A. § 36-60-17; prohibition against damaging utility property, O.C.G.A. § 16-7-25; Georgia Utility Facility Protection Act, O.C.G.A. § 25-9-2 et seq.; Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts Act, O.C.G.A. § 43-51-1 et seq.

20State law reference(s)—Limitation on special legislation, Ga. Const. art. III, § VI, ¶ IV; limitations on municipal offenses, O.C.G.A. § 36-35-6(a)(2); abandonment of containers with snap-locks or motor vehicles which cannot be easily opened, O.C.G.A. § 16-11-100; fireworks, O.C.G.A. § 25-10-1 et seq.; disorderly houses, O.C.G.A. § 16-11-44; peeping Toms, O.C.G.A. § 16-11-61; gambling, O.C.G.A. § 16-12-20 et seq.; cruelty to animals, O.C.G.A. § 16-12-4; criminal trespass, O.C.G.A. § 16-7-21; criminal interference and damage to public property, O.C.G.A. § 16-7-24; abandoned vehicles, O.C.G.A. §§ 40-11-1 et seq., 40-11-20 et seq.; adoption of ordinances to enforce property nuisances, O.C.G.A. § 41-2-9; discharging of firearms, O.C.G.A. §§ 16-11-103, 16-11-104.

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Page 164 of 596(3) Without provocation, use to or of another person in such other person's presence, opprobrious or abusive words which by their very utterance tend to incite to an immediate breach of the peace, that is to say, words which as a matter of common knowledge and under ordinary circumstances will, when used to or of another person in such other person's presence, naturally tend to provoke violent resentment that is, words commonly called "fighting words";

(4) Violently interfere with another's pursuit of a lawful occupation; or

(5) Congregate with others to halt the flow of vehicular or pedestrian traffic and refuse to clear the way when ordered by lawful authority to do so.

State law reference(s)—Disorderly conduct, O.C.G.A. § 16-11-39.

Sec. 50-20. Public drunkenness.

(a) It shall be unlawful for any person to be and appear in an intoxicated condition in any public place or within the curtilage of any private residence not his or her own other than by invitation of the owner or lawful occupant, which condition is made manifest by boisterousness, by indecent condition or act, or by vulgar, profane, loud or unbecoming language.

(b) For purposes in this section, the term "public place" shall not only include publicly owned property, but shall also include privately owned property commonly used as a gathering place for the public and at the time is being so used.

State law reference(s)—Public drunkenness, O.C.G.A. § 16-11-41.

Sec. 50-21. Public consumption of alcoholic beverages.

It shall be unlawful for any person to consume any distilled spirits, wine or malt beverage, in or upon any street, alley, sidewalk or other public thoroughfare or public place in the Town; provided that this prohibition shall not apply where the consumption of alcoholic beverages has been allowed pursuant to special permit or license.

Sec. 50-22. [Possession of marijuana.]

(a) It shall be unlawful for any person to possess one ounce or less of marijuana within the corporate limits of the Town.

(b) Conviction for violation of this ordinance shall be punished by a fine of not more than \$75.00, which fine shall be subject to alternative sentencing.

(c) No person convicted solely of violating this ordinance shall be punished by confinement for any period of time and no additional time served should be added for violation of this ordinance if arrested or cited for another offense.

Sec. 50-23. Unnecessary noise.

(a) *Generally.* The creating of any unreasonably loud, disturbing and unnecessary noise within the limits of the Town is prohibited. Noise of such character, intensity or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.

(b) *Noises in violation.* The following acts, among others, are declared to be loud, disturbing and unnecessary noises and noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(1) *Horns.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, while not in motion except as a danger signal if another vehicle is approaching apparently out of control or, if in motion, only as a danger signal; the creation by means of any such signal device of any unreasonably loud or harsh sound or the sounding of that device for an unnecessary or unreasonable period of time.

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Page 165 of 596(c) (2) (3) (4) (5) (6) (7) (8) (9) (10) *Musical instruments.* The playing of any radio, phonograph or any musical instrument in such a manner or with such volume, particularly during the hours between 12:00 midnight and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons in any office, hospital or in any dwelling, hotel or other type of residence, or any persons in the vicinity, except, this section shall not apply to schools of music between the hours of 7:00 a.m. and 10:00 p.m.

Voices. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 12:00 midnight and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any hospital, dwelling, hotel or other type of residence, or any persons in the vicinity.

Noisy vehicle. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in any manner as to create loud and unnecessary grating, grinding or rattling, or other noise.

Steam whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of fire or danger, or upon request of proper Town authority.

Exhausts. To discharge into the open air the exhaust of any stationary steam engine, stationary internal combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

Construction work. The erection (including excavating), demolition, alteration or repair of any building in any residential district or section, the excavation of streets and highways in any residential district or section, other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, 9:00 a.m. and 6:00 p.m. on Saturdays, 10:00 a.m. and 6:00 p.m. on Sundays, except in cases of urgent necessity, and then only with a permit from the Town, which permit may be granted for a period not to exceed 60 days while the emergency continues.

On streets of institutions requiring quiet. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in session, or adjacent to any hospital, which unreasonably interferes with the workings or sessions thereof.

Loudspeakers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.

Animals. The owning, possessing or harboring of any animal which frequently, or for continued duration, howls, barks, meows, squawks or makes other sound which creates excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive area. For the purposes of this subsection "barking dog" shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of ten minutes, or barks intermittently of one-half hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property; provided, however, that a dog shall not be deemed a barking dog if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon property in or upon which the dog is situated. In such cases where one resident is making a complaint against the caretaker of the barking dog, the Town police shall be notified. If the situation persists, as witnessed by a police officer, the dog's caretaker may receive a first time warning. Should the incident reoccur, then a citation may be issued.

Exceptions. None of the foregoing terms or prohibitions shall apply to or be enforced against:

- (1) Any vehicle of the Town while engaged upon necessary public business;
- (2) Excavations or repairs of bridges, streets or highways, by or on behalf of the Town, county or state during the nighttime, when the public welfare and convenience renders it impossible to perform that work during the day; nor shall the same apply to work performed by public utility companies under like conditions and circumstances, or when there is urgent necessity therefore; and
- (3) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

Page 166 of 596(d) *Permitted activities*. The prohibitions shall not be applicable to any parade, celebration or performance for which a written permit has been obtained prior thereto from the Town clerk.

(e) *Amplifying equipment on public grounds*. It shall be unlawful to use, maintain or operate loudspeakers, sound trucks, amplifiers or other mechanical or electrical devices for increasing the volume of sound, upon the streets, sidewalks, parks or other public places of the Town; provided that nothing in this section shall apply to the United States of America, the state, the county, the Town, nor to public agencies.

State law reference(s)—Conditions under which sound from motor vehicle that are audible at a distance of 100 feet or more prohibited, O.C.G.A. § 40-6-14.

Sec. 50-24. Posting signs on poles without consent.

It shall be unlawful for any person to post or display in or upon any bridge any sign or advertisement, or to post or display upon any telegraph, telephone or electric company's pole, or upon any public property or the private property of any person any bills, signs or advertisements without the consent in writing of the owner thereof.

State law reference(s)—Placement of posters, O.C.G.A. § 16-7-58.

Sec. 50-25. Discharge of firearms; manner of transporting.

No person shall have the right nor shall they discharge any rifle, pistol, gun or other firearm, or any air rifle, air pistol or airgun or any other contrivance whereby a projectile is propelled by means of a propellant, within the Town limits.

Sec. 50-26. Reserved.

Sec. 50-27. Sanitary condition of improved or vacant property.

(a) Owners and occupants of all vacant and improved lots within the Town limits shall at all times maintain their property in such a manner that unsightly overgrowth of tall grasses (ten inches or higher), weeds, underbrush and accumulation of trash or other thing will not create an unsanitary or unsafe condition or hazard as determined by appropriate Town officials.

(b) If the owner of any property shall so maintain the same and shall fail to clean or remove said weeds, underbrush, trash or other fire hazard within ten days after having been notified in writing by an official of the Town administration or the police department, such failure shall constitute a violation of this section. Upon subsequent failures within 12 months of first written notice, a citation will be issued.

(c) In all cases where the property owner and/or occupant, after notice by the Town, fails to clean or maintain said property, the same may be cleaned or maintained by the Town and reasonable costs may be billed to the property owner. Failure to pay the bill will result in a lien being placed upon the property. The Town may also cite the property owner and/or occupant to appear in the municipal court of the Town and upon conviction thereof, the property owner and/or occupant may be punished as provided in section 1-9.

Sec. 50-28. Abandoned appliances; building rubbish.

It shall be unlawful for the owner or occupant of a residential building, structure or property to utilize the

premises of such residential property for the open storage of any abandoned icebox, refrigerator, stove, glass, building material, building rubbish or similar items. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such residential property clean and to remove from the premises all such abandoned items, as listed above, including but not limited to weeds, dead trees, trash, garbage, etc., upon notice from the police department.

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Page 167 of 596 **Sec. 50-29. Open burning in streets.**

It shall be unlawful for any person to light, set fire to or burn leaves, trash or any other substance in or upon the streets of the Town.

Sec. 50-30. Parental responsibility for minors.

Any parent, guardian or other party standing in the place of a parent, who shall permit, aid or encourage any minor to violate any ordinance of the Town, shall be guilty of an offense and, upon conviction, shall be punished as provided by section 1-9.

Sec. 50-31. Loitering or prowling.

(a) A person commits the offense of loitering or prowling when he or she is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(b) Among the circumstances which may be considered in determining whether alarm is warranted is the fact that person takes flight upon the appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

State law reference(s)—Loitering prohibited, O.C.G.A. § 16-11-36.

Sec. 50-32. Maintaining a disorderly house.

A person who keeps and maintains, either by himself or herself or others, a common, ill-governed, and disorderly house, to the encouragement of gaming, drinking or other misbehavior, or to the common disturbance of the neighborhood or orderly citizens, commits the offense of maintaining a disorderly house.

Sec. 50-33. Giving a false name, address or date of birth to a law enforcement officer.

A person who gives a false name or address, or date of birth, to a law enforcement officer in the lawful discharge of his or her official duties with the intent of misleading the officer as to his or her identity or birth date,

commits the offense of giving a false name, address or date of birth to a law enforcement officer.

State law reference(s)—Giving false name to officers, O.C.G.A. § 16-10-25.

Sec. 50-34. Truancy.

Any minor who shall be within the Town limits of the Town during school hours shall be in violation of this Code and declared as truant. Said minor, upon apprehension shall be taken to the appropriate school. If the minor is not a resident of the Town, said minor shall be escorted out of the Town limits. Upon the first offense, the parent, guardian or other party standing in the place of a parent shall receive a "courtesy call." Upon the second offense, the parent, guardian or other party standing in the place of a parent, upon conviction shall be punished by a minimum fine of \$100.00. Upon the third offense, the parent, guardian or other party standing in the place of a parent, upon conviction shall be punished by a minimum fine of \$500.00. Upon the fourth and subsequent offenses, the parent, guardian or other party standing in the place of a parent, upon conviction shall be punished by a minimum fine of \$1,000.00.

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Page 168 of 596 Sec. 50-35. Vandalism.

It is unlawful to damage public property. Cost for repairs of damage to public property will be the responsibility of the defender.

- (1) Accidental damage cost will be assessed on a cost plus administrative fee basis.
- (2) Intentional damage costs will be assessed at the fees above plus an additional fine (plus all applicable court fees).
- (3) Unintentional damages not reported within two business days will be treated as intentional.
- (4) The Town will pay a reward for information leading to the conviction of anyone responsible for defacing or vandalizing public property.

All damage must be reported promptly to the office of the Town clerk, Town Hall.

Sec. 50-36—50-80. Reserved.

ARTICLE III. NUISANCES²¹

DIVISION 1. GENERALLY

Secs. 50-81—50-103. Reserved.

DIVISION 2. ABATEMENT

Sec. 50-104. Definition of nuisances.

The following conditions may be declared to be nuisances:

- (1) Stagnant water on premises;
- (2) (3) (4) (5) (6) (7) (8) Any dead or decaying matter, weeds, vegetation or any fruit, vegetable, animal or rodent, upon premises which is odorous or capable of causing disease or annoyance to the inhabitants of the Town;

The generation of smoke or fumes in sufficient amount to cause odor or annoyance to the inhabitants of

the Town;

The pollution of public water or the injection of matter into the sewage system which would be damaging thereto;

Maintaining a dangerous or diseased animal or fowl;

Obstruction of a public street, highway or sidewalk without a permit;

Loud or unusual noises which are detrimental or annoying to the public, including without limitations, unusual loud disturbances in or around churches or multiple family complexes such as loud music and other activities in swimming pool and clubhouse areas;

All walls, trees and buildings that may endanger persons or property;

²¹State law reference(s)—Nuisances, O.C.G.A. §§ 41-1-1 et seq., 41-2-1 et seq.

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Page 169 of 596(9) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reason;

(10) Unused iceboxes, refrigerators and the like unless the doors or locks thereof are removed;

(11) Any trees, shrubbery or other plants or parts thereof, which obstruct clear, safe vision on roadways and intersections of the Town; and

(12) Any other conditions constituting a nuisance under state law.

Sec. 50-105. Offense; penalty.

It is hereby declared to be an offense for any owner, agent or tenant to maintain or allow a nuisance to exist.

Each day a nuisance is continued shall constitute a separate offense.

Sec. 50-106. Jurisdiction.

The municipal court shall have full jurisdiction to try and dispose of all questions of nuisance affecting the public health or welfare, and shall also have jurisdiction to try and, in cases of convictions, to punish persons failing to abate nuisances, as prescribed in section 1-9.

Sec. 50-107. Complaint of nuisance; hearing.

(a) Any official or inhabitant of the Town may direct a complaint of nuisance to the Town police department, who shall investigate and may place the complaint on the municipal court docket for a hearing upon the basis of the investigation. The municipal court after a ten day notice to the party involved, shall hold a hearing thereon and upon finding that a nuisance does exist shall issue an order to the owner, agent in control of or tenant in possession, stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the court shall deem reasonable, having consideration for the nature of the nuisance and its effect on the public.

(b) Animal control officers, license and building inspectors shall and may also receive complaints, investigate the same and place on the court docket such complaints in the same manner as police officers.

Sec. 50-108. Abatement by Town.

(a) In any case where the owner, agent or tenant fails to abate the nuisance in the time specified, or where the owner, agent or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the recorder that it must be immediately abated, the court may issue an order to the chief of police directing the nuisance to be abated. The chief of police in such case, shall keep record of the expense and cost of abating same, and the costs shall be billed against the owner, agent or tenant for collection as for Town revenues.

(b) Other Town departments shall assist the chief of police as is necessary in abating nuisances hereunder.

Sec. 50-109. Nuisances per se; exception; summary abatements.

Nothing contained in this division shall prevent the mayor from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

Secs. 50-110—50-131. Reserved.

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Page 170 of 596PART II - CODE OF ORDINANCES

Chapter 50 - OFFENSES

ARTICLE III. - NUISANCES

DIVISION 3. JUNKED VEHICLES

*DIVISION 3. JUNKED VEHICLES*²²

Sec. 50-132. Definitions.

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

Junked motor vehicle means any motor vehicle, trailer or camper which does not have lawfully affixed thereto an unexpired license plate and the condition of which is wrecked, dismantled, partially dismantled, inoperative or discarded.

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

Police department means the chief of police or a designee thereof.

Private property means any real property within the Town which is privately owned and which is not public property as defined in this section.

Public property means any street or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

Sec. 50-133. Storing, parking or leaving junked motor vehicle prohibited; exceptions.

No person shall park, store, leave or permit the parking, storing or leaving of any junked motor vehicle or parts of any such motor vehicle whether attended or not, upon any public or private property within the Town for a

period of time in excess of 72 hours. The presence of a junked vehicle or parts thereof on private or public property is hereby declared illegal. This section shall not apply to any vehicle enclosed within a building on private property or to any vehicle held in connection with a business enterprise, lawfully licensed by the Town and property operated in the appropriate business zone, pursuant to the zoning laws of the Town, or to any motor vehicle in operable condition specifically adopted or designed for operation on drag strips or raceways, or any vehicle retained by the owner for antique collection purposes bearing a valid state antique licenses.

Sec. 50-134. Notice to remove.

Whenever it comes to the attention of the police department that any vehicle is located in violation of this division in the Town, a notice in writing shall be served upon the occupant or the land where the vehicle is located, or in case there is no such occupant, then upon the owner of the property or an agent thereof notifying them of the violation and requesting its removal in the time specified in this division.

Sec. 50-135. Responsibility for removal.

Upon proper notice and opportunity to be heard, the owner of the junked vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the Town, the owner, or occupant of the private property where same is located, shall be liable for the expenses incurred. Expenses must be paid before the owner may reclaim the vehicle.

²²State law reference(s)—Authority to provide for removal of junked vehicles, O.C.G.A. § 36-60-4.

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Page 171 of 596**Sec. 50-136. Notice procedure.**

The police department of the Town shall give notice to remove to the owner or occupant of the private property where such vehicle is located at least ten days before compliance is required. It shall constitute sufficient notice, when a copy of same is posted in a conspicuous place upon the private property on which the vehicle is located.

Sec. 50-137. Content of notice.

The notice shall contain the request for removal within the time specified in this division, and the notice shall advise that upon failure to comply with the notice to remove, the police chief or a designee thereof shall undertake such removal with the cost of removal to be levied against the owner or occupant of the property.

Sec. 50-138. Removal of motor vehicle from public streets.

The police department shall have the right to take possession of motor vehicles in violation of this division from public streets which are a threat to the safety and welfare of the public or on private property blocking access to fire hydrants, driveways and the like, without prior notice.

Sec. 50-139. Request for hearing.

The persons to whom the notice is directed, or their duly authorized agent, may file a written request for a hearing before the municipal court to the Town within the ten day period for compliance prescribed in this division.

If it is determined in the municipal court that this division has been violated, then the person responsible for the vehicle shall be punished by a fine, imprisonment, and/or ordered to remove the vehicle pursuant to section 1-9.

Further, each day after the expiration of the notice shall be considered a separate offense.

Sec. 50-140. Notice of removal.

Within 48 hours of the removal of a vehicle under this division, the police department shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that the vehicle has been impounded and stored for violation of this division. The notice shall give the location of where the vehicle is stored, and the costs incurred by the Town for removal.

Sec. 50-141. Right to contract with independent contractors.

The Town shall maintain the right to contract with independent contractors for towing, storage, and for sale of unclaimed junked vehicles.

Sec. 50-142. Public sale.

The time and place of public sale for unclaimed junked vehicles shall be set and disposal provided in the same manner as the disposal of Town property.

Sec. 50-143. Liability of owner or occupant.

Upon the failure of the owner or occupant of property on which junked vehicles have been removed by the Town to pay the un-recovered expenses incurred by the Town in the removal, a lien shall be placed upon the property for the amount of the expenses, less the amount obtained in the sale of the vehicle.

Secs. 50-144—50-199. Reserved.

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Chapter 54 PLANNING AND DEVELOPMENT

Chapter 54 PLANNING AND DEVELOPMENT

ARTICLE I. IN GENERAL

Secs. 54-1—54-80. Reserved.

ARTICLE II. REGULATIONS

The Barrow County Unified Development Code (“UDC”) is adopted in its entirety and as it may be amended from time to time. The provisions of the UDC shall govern except the Town shall have all authority as reserved to any county building, planning, or inspection official and all authority designated to the County Commissioners for final approval or rejection of zoning and land use applications shall apply to the Town council.

(See Appendix B)

Chapter 58 PUBLIC SAFETY²³

ARTICLE I. IN GENERAL

Secs. 58-1—58-18. Reserved.

ARTICLE II. LAW ENFORCEMENT

Sec. 58-19. Penalties.

Any person violating any provision of this article, or any rule, order or regulation made pursuant to this article, shall, upon conviction thereof, be punishable as for committing a misdemeanor.

23State law reference(s)—Authority to provide police protection, Ga. Const. art. IX, § II, ¶ III(a)(1); authority to provide fire protection, Ga. Const. art. IX, § II, ¶ III(a)(1); head of municipal law enforcement, O.C.G.A. § 35-1-12; requirements for identity fraud, O.C.G.A. § 35-1-13; municipalities may expend funds for police training, O.C.G.A. § 35-4-7; municipal compensation for law enforcement, O.C.G.A. § 36-30-9; municipal liability for torts committed by police or other officers, O.C.G.A. § 36-33-3; Georgia Emergency Management Act of 1981, O.C.G.A. § 38-3-1 et seq.; Municipal and County Police Departments' Nomenclature Act of 1996, O.C.G.A. § 35-10-1 et seq.; authority of municipalities regarding fire and life safety, O.C.G.A. § 25-3-4 et seq.; local government may adopt fire safety code, O.C.G.A. § 25-3-4; minimum standards codes, O.C.G.A. § 8-2-25; Municipal, County, and Volunteer Fire Departments Nomenclature Act of 1996, O.C.G.A. § 25-13-1 et seq.; volunteer firemen may serve as member of governing authority, O.C.G.A. § 36-60-23; liability and immunity of municipal corporations, O.C.G.A. § 36-33-1 et seq.

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Page 173 of 596**Sec. 58-20. Composition of police department.**

The police department shall consist of those officers and employees of those ranks and positions as approved by the Town council.

Sec. 58-21. Responsibilities.

The department shall be responsible for patrol, traffic control, investigation of accidents, investigation of crimes, apprehension of offenders, court appearances, security of business establishments, and for any other matters of public safety and law enforcement as directed by the Town council.

Sec. 58-22. Police department rules and regulations.

Under the direction of the mayor and council, the police chief shall maintain written rules and regulations for the operation of the police department as are necessary. Changes in the departmental rules and regulations shall be proposed in writing by the police chief. Such changes shall be submitted to the mayor and council for approval.

Sec. 58-23. Emergency; special powers.

(a) In the event of man-made or natural disaster, mass electrical failure, rioting, actual enemy attack upon the United States or any other emergency which may affect lives and property, the mayor may declare that a state of emergency exists by written order setting out the circumstances of the emergency and that portion of the Town affected. Thereafter the mayor shall have and may exercise for any period as this state of emergency

exists or continues, the following emergency powers:

- (1) To enforce all rules, laws and regulations relating to emergency management;
 - (2) To seize, take for temporary use, or condemn any property for the protection of the public;
 - (3) To sell, lend, give or distribute all or any property or supplies among the inhabitants of the Town; to maintain a strict accounting of property or supplies distributed and for funds received for the property or supplies;
 - (4) To declare a limited or general curfew as may be needed to restore public order;
 - (5) To prohibit or regulate the possession, sale or use of explosives, gasoline or other flammable liquids, firearms, ammunition or dangerous weapons of any kind;
 - (6) To close any business establishments necessary;
 - (7) To perform and exercise any other functions and duties and take any emergency actions as may be necessary to promote and secure the safety, protection and well-being of the inhabitants of the Town.
- (b) Upon a declaration of an emergency above, the Town council shall immediately be called into session to perform any duties necessary.
- (c) The state of emergency and the resulting powers may be ended immediately upon a motion thereon being adopted by the Town council or by an order of the officer declaring the emergency.
- (d) Otherwise, such emergency and the powers under this section shall lapse within 72 hours of the declaration unless another specific time period is provided in the declaration.

State law reference(s)—Orders, rules, and regulations made by political subdivision, O.C.G.A. § 38-3-28.

Sec. 58-24. Emergency management.

As used in this article, the term "emergency management" means the preparation for and the carrying out of all emergency and disaster functions other than those functions for which military forces or state and federal agencies

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Page 174 of 596 are primarily responsible, to prevent, minimize and repair injury and damage resulting from emergencies, energy emergencies or disasters, or the imminent threat thereof, of man-made or natural origin caused by enemy attack, sabotage, acts of domestic or international terrorism, civil disturbance, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot or other hostile action, radiological action or other causes. These functions may include, without limitation, fire-fighting services, police services, emergency medical and health services, rescue, engineering, warning services, communications, defense from the effects of radiological, chemical, biological and other special weapons to include weapons of mass destruction, evacuation of persons from stricken areas, emergency welfare services, consequence management functions to include victim services, emergency transportation, plant protection, shelter, temporary restoration of public utility services and other functions related to civilian protection, together with all other activities necessary or incidental to total emergency and disaster preparedness for carrying out the foregoing functions.

State law reference(s)—Definitions, O.C.G.A. § 38-3-3.

Sec. 58-25—58-26. Reserved.

Sec. 58-27. Powers during an emergency or disaster.

In the event of a man-made or natural disaster, actual enemy attack upon the United States, or any other emergency which may affect the lives and property of the citizens, the mayor of the Town, separately or jointly with the CEO, county commissioners and the county, or in their absences, their legally appointed successors, or any two members of the council may determine that an emergency or disaster exists and thereafter shall have and may exercise for such period as such emergency or disaster exists or continues, the following powers:

- (1) To enforce all rules, laws and regulations relating to emergency management, and to assume direct operational control over all emergency management resources;
- (2) To seize or take for temporary use, any private property for the protection of the public;
- (3) To sell, lend, give or distribute all or any such property or supplies among the inhabitants of the county and to maintain a strict accounting of property or supplies distributed and for funds received for such property or supplies; and
- (4) To perform and exercise such other functions and duties, and take such emergency actions as may be necessary to promote and secure the safety, protection and well-being of the inhabitants of the county.

State law reference(s)—Powers of political subdivision during an emergency, O.C.G.A. § 38-3-54; local organization and emergency management, O.C.G.A. § 38-3-27(e).

Sec. 58-28. Volunteers.

All persons, other than officers and employees of the Town performing emergency functions pursuant to this article, shall serve with or without compensation. While engaged in such emergency functions, duly assigned volunteers shall have the same immunities from liability as Town officers and employees.

State law reference(s)—Immunity of emergency management workers and volunteers, O.C.G.A. § 38-3-35.

Sec. 58-29. Liberality of construction.

This article shall be construed liberally in order to effectuate its purpose.

Secs. 58-30—58-48. Reserved.

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Chapter 58 - PUBLIC SAFETY

ARTICLE III. FIRE PREVENTION AND PROTECTION

ARTICLE III. FIRE PREVENTION AND PROTECTION

Sec. 58-49. Fire safety standards; adoption by reference.

The minimum fire safety standards of the state and the fire prevention ordinances of Barrow County, as adopted by the county board of commissioners, are hereby incorporated by reference herein and adopted as the

ordinances of this Town, and the county is hereby authorized to extend the services of the fire prevention bureau to the citizens of this Town, and the personnel of said bureau are authorized to enforce said ordinances within the limits of this Town, and are hereby made deputy marshals thereof. Copies of the fire safety standards and fire prevention ordinances shall be maintained on file in the office of the Town clerk.

Sec. 58-50. Tampering with alarm system.

It shall be unlawful for any person to willfully, maliciously or mischievously interfere or tamper with any fire alarm box or any of the appliances or apparatus connected therewith, located within the corporate limits.

Sec. 58-51. Smoke detectors.

(a) All new and existing dwellings shall have an approved smoke detector on each living area level and, where one or more bedrooms or sleeping areas are on a level, a detector shall be located not more than 15 feet from the doorway of each such bedroom or sleeping area.

(b) Approved smoke detectors shall be installed in accordance with the manufacturer's instructions.

(c) Smoke detectors in all new construction shall be installed prior to the issuance of any occupancy permit by the Town for the occupancy of the dwelling.

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

Approved smoke detector means a device for giving early warning upon the detection of smoke that is approved by Underwriter's Laboratory or Factory Mutual or other major testing laboratory and is capable of sensing particles of combustion and providing an audible alarm of a minimum of decibels.

Dwelling means and includes, but is not limited to, one- and two-family dwellings, duplexes and apartment units.

State law reference(s)—Smoke detectors to be installed in new dwellings, dwelling units, and other facilities, O.C.G.A. § 25-2-40.

Chapter 62 PUBLIC WORKS

ARTICLE I. IN GENERAL

Secs. 62-1—62-18. Reserved.

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Chapter 62 - PUBLIC WORKS

ARTICLE II. STREETS AND SIDEWALKS

ARTICLE II. STREETS AND SIDEWALKS²⁴

Sec. 62-19. Permit to dig in streets.

No person shall make any excavations or openings or dig any ditch, trench, tunnel or hole in, along, across or under any street, sidewalk or other public place for the purpose of laying or placing therein any pipe, wires, poles or

for any other purposes, unless a written permit therefor has been issued by the Town clerk. A permit shall not be required where the work is performed under a contract with the Town but in the event that work requires a sidewalk or street to be wholly or partially obstructed, the person shall notify the Town clerk and the police department at least two hours before obstructing the sidewalk or street, unless prevented by sudden emergency.

Sec. 62-20. Application for permit.

All persons desiring a permit in order to make an opening in any street or sidewalk, as set forth in section 62-19, shall make written application therefor, which application shall show the location of the proposed opening, the purpose therefor and the approximate number of square yards of surface to be cut.

Sec. 62-21. Town indemnified.

Any person obtaining a permit as provided for in sections 62-19 and 62-20 agrees, as a condition of the issuance of the permit to indemnify and hold harmless the Town against any claims or expenses, including attorney's fees for bodily injury or property damage for accidents or occurrences arising out of the person's operations.

Sec. 62-22. Street repair.

When any part of any street, sidewalk, alley or other public place of the Town shall be torn or dug up for any purpose, the person, firm or corporation making that excavation or opening shall have the duty of refilling the excavation or opening so as to restore it to essentially the same condition that existed prior to the excavation or opening. Any person neglecting, refusing or failing to comply with any provisions of this section shall be guilty of a violation thereof; and where any neglect, refusal or failure is continued, after notice from the Town clerk, every day's continuance thereafter shall constitute a separate and distinct offense.

Sec. 62-23. Excavations; leaving unprotected.

It shall be unlawful for any person who obtains a permit under the sections of this article to do any excavation of any kind which may create or cause a dangerous condition in or near any street, alley, sidewalk or public place of the Town without placing and maintaining proper guard rails and signal lights or other warnings at, in or around the work, sufficient to warn the public of any excavation or work, and to protect all persons using reasonable care from injuries on account of work.

²⁴State law reference(s)—Constitutional powers regarding streets, Ga. Const. art. IX, § II, ¶ III(a)(4); municipal authority to own, operate and maintain parks, recreational facilities, and streets, O.C.G.A. § 36-34-3; street obstructions, O.C.G.A. § 36-30-10; municipal street administration, O.C.G.A. § 32-4-90 et seq.; street improvements, O.C.G.A. § 36-39-1 et seq.; regulation of maintenance and use of public roads generally, O.C.G.A. § 32-6-1 et seq.; liability and immunity of municipal corporations, O.C.G.A. § 36-33-1 et seq.

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Sec. 62-24. Sidewalk construction.

No sidewalk of any description shall be built by any individual of any brick, wood or other material without a written permit from the Town.

Sec. 62-25. Streets and sidewalks not to be damaged.

It shall be unlawful for any person to drag or run, or cause to be dragged or run any harrow or other implement, engine, machine or tool upon any asphalt, bithulitic, warrenite or other type of permanently paved street or sidewalk of the Town which shall be liable in any way to injure or cut the surface thereof. It shall also be unlawful to injure any dirt street in the same manner.

Sec. 62-26. Violation.

All persons found guilty of a violation of this article shall be punished as provided in section 1-9.

Secs. 62-27—62-34. Reserved.

ARTICLE III. SOLID WASTE COLLECTION AND DISPOSAL²⁵

DIVISION 1. IN GENERAL

Sec. 62-35. Definitions.

For the purposes of this chapter, certain terms and words are defined. Where words have not been defined, but are defined in section 1-2, those words shall have the meaning as defined therein. The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved receptacle for residential solid waste means a galvanized metal container or durable plastic container or durable plastic bag with the capacity of not less than 20 gallons and no more than 32 gallons, with the containers having two durable handles on the sides thereof and a removable tight-fitting top. All containers shall be waterproof. Oil or grease drums, paint cans and similar salvaged containers shall not be acceptable.

Approved receptacle for yard debris trimmings means a biodegradable paper bag, empty card board box, clean galvanized metal container or durable plastic container with a capacity Town of not less than 20 gallons and no more

²⁵Editor's note(s)—Ord. No. 2018-02, § 1(Exh. A), adopted Nov. 13, 2018, repealed the former Art. III, §§ 62-56—62-63, inasmuch as it superceded said provisions, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and derived from Code 1987, § 4-2-1—4-2-8; Ord. of 10-14-1996, § 4-2-1.

State law reference(s)—Authority of municipalities to provide for garbage and solid waste collection and disposal, Ga. Const. art. IX, § II, ¶ III(a)(2); municipal authority to own, operate, maintain water/sewage systems, O.C.G.A. § 36-34-5; local solid waste management plans, O.C.G.A. § 12-8-31.1; Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20; creation of municipal solid waste management authority, O.C.G.A. § 12-8-53; prohibition against public littering, O.C.G.A. § 16-7-43 et seq.; no limitation on municipal authority to declare nuisance, O.C.G.A. § 12-8-30.9; adoption of ordinances to enforce nuisance provisions, O.C.G.A. § 41-2-9; municipal authority to impose restrictions on tire disposal, O.C.G.A. § 12-8-40.1.

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than 40 gallons. Containers shall have two durable handles on the container or an approved receptacle for yard debris trimmings.

Collector means a person who, under agreements, verbal or written, with or without compensation, does the work of collecting and/or transporting solid waste from industries, offices, retail outlets, businesses, institutions and/or similar locations or from residential dwellings; provided, however, that this definition shall not include an individual collecting and/or transporting waste from the individual's own single-family dwelling unit.

Commercial container means a manufactured container suitable for emptying by mechanical equipment and approved by the director. The following general standards are prescribed for commercial containers:

- (1) All containers must be steel, continuous welded and properly reinforced.
- (2) All lids will be flanged and reinforced for strength.
- (3) Pickup side of container shall be reinforced inside or outside at point of torque tub contact.
- (4) Inside reinforcement shall be pressed steel angel.
- (5) Bottoms shall be reinforced with one-and-one-half-inch drain plug installed flush to bottom.
- (6) All containers shall be primed and finished with enamel and epoxy paint.
- (7) Body dimensions as to length and height of container can vary with the size of container; however, all container widths will be 70 inches. Minimum gauges of steel shall be as follows:

12 gauge

Walls Ends 12 gauge

Bottoms 12 gauge for 4 cu. ft. and below

10 gauge for all over 4 cu. ft.

Lids 16 gauge

Doors 14 gauge

Commercial establishment means any hotel, motel, apartment house, rooming house, business, industrial, public or semipublic establishment of any nature or kind whatsoever other than a single dwelling unit/residential unit and condominiums.

Commercial front loader container means a manufactured container suitable for emptying by mechanical equipment and approved by the director.

Commercial/industrial solid waste means solid waste from commercial establishments that includes but is not limited to material from industrial processes, manufacturing canneries, slaughterhouses, packing plants, poultry processing plants or similar industries, and food waste.

Compactor container means a manufactured commercial container of any size with a self-contained compacting mechanism or an external compactor which is designed to be used in conjunction with the individual home appliance.

Compactor front loader container means a manufactured commercial container of any size with an external mechanical compacting system that detaches in order to be serviced by driving forward to the container using a

commercial front loader vehicle.

Compactor roll-off container means a manufactured commercial container of any size with an internal or external mechanical compacting system that either detaches or is fully self-contained and is serviced by backing up to the container and hoisting it onto a commercial roll-off container vehicle.

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Condominium means individual ownership units in a multifamily structure with a front and back entrance to each unit on the ground level.

Construction and demolition solid waste means solid waste from construction and demolition projects that include but is not limited to remodeling, repair operations on houses, commercial buildings, multiple dwellings and other structures such as concrete, bricks, plaster, stone, earth, lumber, roofing materials, gutters, shavings and sawdust.

Conveyance means any automobile, plane, train, bus, bicycle, motorcycle or other method of transporting persons from one place to another.

Discard means to throw, abandon, place, deposit, discharge, dump, bury, burn or dispose of a substance.

Disposal facility means any facility or location where any treatment, utilization, processing or deposition of solid waste occurs.

Garbage means waste including but not limited to food waste, including waste accumulation of animal or vegetable matter used or intended for use as food, or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.

Hazardous waste means solid or liquid waste that does not meet the toxic characteristic leachate procedure requirements and includes but is not limited to highly flammable or explosive wastes; toxic wastes; industrial sludge; and other waste material that the director determines to be a likely hazard to the public health, safety or environment, except radioactive waste materials.

Incinerator means the high temperature waste combustion unit designed to dispose of pathological matter.

Landfill means a method of disposing of solid wastes, other than putrescible wastes or hazardous wastes, on land by placing an earth cover thereon.

Litter means, but is not limited to, any organic or inorganic waste material, rubbish, refuse, garbage, trash, yard debris, hulls, peelings, debris, grass, weeds, ashes, sand, gravel, slag, brickbats, metal, plastic, and glass containers, broken glass, dead animals or intentionally or unintentionally discarded materials of every kind and description but the term litter does not include "waste" as that term is defined in O.C.G.A. § 16-7-51(6), as amended.

Multiple dwelling means a building designed for and containing two or more dwelling units.

Municipal solid waste means, but is not limited to, any solid waste derived from households, including garbage, trash and solid waste from single-family and multifamily residences, hotels and motels, bunkhouses, campgrounds, picnic grounds, and day use recreation areas. The term includes yard debris not separated for recycling and commercial solid waste but does not include solid waste from mining, agricultural, or silvicultural

operations or industrial processes or operations.

Noncombustible trash means, but is not limited to, materials which are unburnable in the incinerator or at incinerator temperature of 800 to 1,800 degrees Fahrenheit such as mineral water, metal furniture, large metal scraps and wires, auto bodies or parts, and other similar materials.

Owner means any person or entity that generates solid waste on real property in the Town and who is designated by the records of the office of tax commissioner as the owner of such real property within the Town.

Plastic bag means a polyethylene or other heavy-duty plastic bag meeting the National Sanitation Foundation standard of at least one and one-half (1.5) mils and not exceeding a thirty-two-gallon capacity.

Public or private property means the right of way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge, or conservation or recreation area; timberlands or forests; and land used for business, residential, commercial, industrial, or farm purposes.

Putrescible waste means wastes that are capable of being decomposed by microorganisms. Examples of putrescible wastes include but are not necessarily limited to kitchen wastes, animal manure, offal, hatchery and poultry processing plant wastes, and garbage.

Recycle means any process by which materials that would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or products.

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Page 180 of 596 *Refuse* means garbage, rubbish or commercial refuse.

Residential unit means any freestanding structure or shelter or any part thereof used or constructed for use as a residence for one family.

Sanitary landfill means a method of disposing of putrescible waste on land for final disposition and/or management.

Sanitation or sanitary district means the designated service area established by the county encompassing the Town.

Scavenge means uncontrolled picking from discarded solid waste materials.

Solid waste means any garbage or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded materials including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operation materials; solid or dissolved matters in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject under 33 U.S.C. § 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended and as defined by O.C.G.A. § 12-8-22(33), as amended.

Special industrial waste container means any container such as a metal box, bucket, an open bed container or special container used for transporting chemicals, paint, metals, glass, oil products, plastics or any type of material that requires special handling and cannot be incinerated.

Stationary compactor means an object of refuse container system which compacts refuse at the site of generation into a pull-on detachable container.

Tax commissioner means the constitutional officer charged with collecting both state, county and special taxes as established by Ga. L. 1927, p. 558, § 2.

Yard debris means leaves, brush, grass clippings, shrub and tree prunings, discarded Christmas trees, nursery and greenhouse vegetative residuals, and vegetative matter resulting from landscaping development and maintenance other than mining, agricultural, and silvicultural operations.

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 62-36. Applicability.

This chapter applies to the preparation and storage, collection, transportation and disposal of all refuse in the Town, including all public and private property. This chapter prescribes rules and regulations therefore, regulates the collection of garbage and refuse, provides for the licensing and regulation of private garbage and refuse collection, prescribes rules and regulations for hauling garbage refuse and other waste material within or through the Town, and prohibits the unlawful deposit of litter within the incorporated area of the Town.

Sec. 62-37. Private transportation of refuse.

(a) It shall be unlawful for any person including county refuse collectors and sanitary contractors to haul, convey or cause to be conveyed any refuse, including discarded building material or discarded furniture, upon or along the public streets and roadways except when the material transported is adequately secured in such a manner as to prevent it from falling, leaking or being blown from transporting vehicles. The operator or owner of the offending vehicle shall be personally responsible for any violation of this section.

(b) It shall be unlawful for any person not licensed by the county to collect and haul any refuse other than that arising from such person's own accumulation within any areas of the Town in which refuse collection service is maintained by the county under intergovernmental contract with the Town.

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Sec. 62-38. Disposal of refuse and garbage generally.

(a) It shall be unlawful for any person to dump or to cause to be dumped any garbage, refuse, litter, junk, appliances, equipment, cans, bottles, paper, lumber, trees, tree limbs, brush or parts thereof anywhere in the Town.

(b) The provisions of subsection (a) of this section do not apply to the dumping on private property with the owner's permission of sand, dirt, broken dirt, blocks, broken pavement or other suitable material for use as a fill to raise the elevation of the land, provided it is not maintained in an unsightly condition and provided the owner or owners of the property on which such material is dumped agrees to level such dumped material with appropriate grading equipment and assess the cost thereof against the real property on which such material was dumped.

(c) If any of the matter or material dumped in violation of the provisions of subsection (a) of this section can be identified as having last belonged to, been in the possession of, sent to or received by, or to have been the property of any person prior to its being dumped as prohibited therein, this identification shall be presumed to

be prima facie evidence that the owner dumped or caused to be dumped such matter and material in violation of this chapter.

Sec. 62-39. Operation of private landfills.

(a) No sanitary landfill or dump shall be operated within the Town.

Sec. 62-40. Service provided to Town under contract with county.

Sanitation service shall be provided to the Town in accordance with a third-party agreement.

Secs. 62-41—62-80. Reserved.

Chapter 66 SIGNS

See Appendix B

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