

Chapter 16: Offenses and Violations

Article 1: General Prohibitions

Section 1: Disorderly Conduct.

- (a) It shall be unlawful for any person to disturb or endanger the public peace or decency by any disorderly conduct.
- (b) The following acts, among others, are declared to be disorderly conduct:
 - (i) Act in a violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person's life, limb or health;
 - (ii) Act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being damaged or destroyed;
 - (iii) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
 - (iv) Assemble or congregate with another or others for the purpose of gaming;
 - (v) Be in or about any place, alone or with others, with the purpose of or intent to engage in any fraudulent scheme, trick or device to obtain any money or valuable thing or to aid or abet any person doing so;
 - (vi) Be in or about any place where gaming or illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs are practiced, allowed or tolerated, for the purpose of or intent to engage in gaming or the purchase, use, possession or consumption of such illegal drugs, narcotics or alcohol;
 - (vii) Direct fighting words toward another, that is, words which by their very nature tend to incite an immediate breach of the peace;
 - (viii) Interfere, by acts of physical obstruction, with another's pursuit of a lawful occupation;
 - (ix) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and to fail to clear that public way after being ordered to do so by a city police officer or other lawful authority;
 - (x) Stand or remain in or about any street, sidewalk, overpass, or public way so as to impede the flow of vehicular or pedestrian traffic, and to fail to clear such street, sidewalk, overpass or public way after being ordered to do so by a police officer or other lawful authority;
 - (xi) Disrupt by actions which tend to cause an immediate breach of the peace the undisturbed activities of any house of worship, hospital, or home for the elderly; or
 - (xii) Throw bottles, paper, cans, glass sticks, stones, missiles, or any other debris on public property.

Section 2: Offenses against public morals

- (a) A person commits the offense of distributing obscene material when he or she sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word 'knowing,' as used in this section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he or she has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if a commercial dissemination of obscene material is involved, the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
- (b) Material is obscene if:
 - (i) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion
 - (ii) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and
 - (iii) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:
 - (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
 - (B) Acts of masturbation;
 - (C) Acts involving excretory functions or lewd exhibition of the genitals;
 - (D) Acts of bestiality or the fondling of sex organs of animals; or
 - (E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.
- (c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.
- (d) Material not otherwise obscene may be obscene under this Code section if the distribution thereof, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.
- (e) It is an affirmative defense under this Code section that selling, lending, renting, leasing, giving, advertising, publishing, exhibiting, or otherwise disseminating the material was restricted to:

- (i) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing a course of study related to such material; or
 - (ii) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.
- (f) A person who commits the offense of distributing obscene material shall be guilty of a misdemeanor of a high and aggravated nature.

Section 3: Alcohol related offenses.

- (a) *Alcohol consumption near package stores.* It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance.
- (b) *Drinking in public.* It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the City, or while in or on the grounds of any MARTA station. Further it shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while in any city park except during permitted festivals or at other licensed locations within such parks.

A licensee may prepare and serve alcoholic beverages to be consumed within an outdoor dining area as part of the operation of a sidewalk café. Open containers of alcoholic beverages shall only be transported into or out of outdoor dining areas by the licensee's working employees as part of their work duties.

- (c) *Disorderly while under the influence.*
- (i) Acts constituting violation. It shall be unlawful for any person within the corporate limits of the City to be disorderly while under the influence on the streets, sidewalks or other public places. The following acts are declared to be in violation of this section:
- (A) Any person who acts in a reckless manner so as to create an unreasonable risk to himself, to others or to property in the vicinity while under the influence of alcohol or drugs.
 - (B) Any person who shall defecate or urinate on the streets or sidewalks or in the halls or elevators of public or commercial buildings, or on any property open to public view in the City while under the influence of alcohol or drugs.
 - (C) Any person who, without provocation, uses to or of another, in such person's presence fighting words, or who shall panhandle under the influence of alcohol or drugs.
 - (D) Any person who shall act in a tumultuous manner toward another so as to endanger the life limb, health or property of another while under the influence of alcohol or drugs.

- (E) Any person who shall lie down or otherwise obstruct, block or impede pedestrian or vehicular traffic on any sidewalk, street, or entrance or exit to any public way, house of worship, business, public hall, theater, public conveyance or other public place and who shall refuse to remove themselves when ordered to do so by a City Police Officer or other lawful authority while under the influence of alcohol or drugs.
 - (F) Any person who shall act in a boisterous, turbulent, or agitated manner, or who shall use profane, vulgar, loud or unbecoming language while under the influence of alcohol or drugs while on the city streets sidewalks, or other public places within the corporate limits of the City.
 - (ii) Duty of peace officer. Any peace officer, in accordance with standards set out in standard operating procedures promulgated by the Police Chief, may take or send an individual under the influence of alcohol or drugs to such person's home or to a treatment facility in lieu of incarcerating such person for violations of this section or when such person is unresponsive to the officer's communications. Any peace officer so acting shall be considered as carrying out such peace officer's official duty. The standard operating procedures shall set out the circumstances under which a peace officer may send an individual home or to treatment facility without formally rendering charges against a person.
- (d) Furnishing to, purchasing of, or possession by person under 21 years of age of alcoholic beverages.
- (i) Except as otherwise authorized by law:
 - (1) No person 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 under 21 years of age shall purchase, drink or knowingly possess any alcoholic beverages;
 - (3) 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;
 - (4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age;
 - (5) No person under 21 years of age shall misrepresent such person's identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverages; or
 - (6) No person shall keep or maintain a place where persons under 21 years of age are allowed and permitted to come and purchase, drink or possess any alcoholic beverage.
 - (ii) The prohibitions contained in subsections (1), (2) and (4) of subsection (i) of this section shall not apply with respect to the sale, purchase or possession of alcohol beverages for consumption:

- (A) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (B) At a religious ceremony.
- (iii) The prohibitions contained in subsections (1), (2) and (4) of subsection (i) of this section shall not apply with respect to the possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person under 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present.
 - (iv) The prohibition contained in subsection (1) of subsection (i) 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 subsection, 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.
 - (v) 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:
 - (A) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishments;
 - (B) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or
 - (C) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.
 - (vi) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding, against another person for violation of any provision of this section, shall not be used as an admission in any administrative or judicial proceedings brought against such testifying person who is under 21 years of age.
 - (vii) Nothing in this section shall be construed to modify, amend or supersede O.C.G.A. Title 15, Chapter 11 (O.C.G.A. § 15-11-1 et seq.).
 - (viii) Any person convicted of violating any prohibition contained in subsection (i) of this section shall be punished by a fine not to exceed \$1,000.00 or imprisonment in the City Jail for not more than 180 days or both; except that any person convicted of violating subsection (i)(2) of this section shall be punished by not more than 30 days’ imprisonment or a fine of not more than \$300.00, or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the County in which the alleged offense occurred.

Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the County in which the alleged offense occurred.

- (ix) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (i)(2) or (i)(3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require. The terms of probation shall preferably be such as require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.
- (x) Unless the officer has reasonable cause to believe such person is intoxicated, a law enforcement officer may arrest by issuance of a citation a person accused of violating only subsection (i)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge, having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.
- (e) Consumption and transporting open containers of alcoholic beverages. No person shall consume alcoholic beverages or transport open containers of alcoholic beverages on or upon public areas, except where otherwise authorized in this Code.

Section 4: Prostitution and Related Offenses

- (a) House of ill fame.

- (1) A person, having or exercising control over the use of any place or conveyance within the City which would offer seclusion or shelter for the practice of prostitution, commits the offense of keeping a place of prostitution when such person knowingly grants or permits the use of such place for the purpose of prostitution;
- (2) Those places or conveyances which have been adjudged to be places of prostitution, as provided in this Chapter, may be abated as also provided in this Chapter.

(b) Solicitation for an illicit sexual act.

- (1) It shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to offer or consent to perform any illicit sexual act for money or any other thing of value. Furthermore, it shall be unlawful for any person, while in a place open to the public and whether as a pedestrian or in a motor vehicle, to attempt to induce, entice, solicit, pander, purchase or procure another to commit any illicit sexual act for money or other things of value. An illicit sexual act is defined as one or more of the following:
 - (i) Prostitution.
 - (ii) Sodomy for hire.
 - (iii) Masturbation for hire.
- (2) For purposes of subsection (b)(1) of this section, any person shall include solicitors of illicit sexual acts or panderers, who solicit, procure or purchase another to perform any illicit sexual act in exchange for money or other things of value, and who are commonly referred to as "johns" or "tricks."

Any person engaging in violation of this section shall be guilty of the offense of idling and loitering for the purposes of committing an illicit sexual act.

Section 5: Public Indecency

It shall be unlawful for any person to perform any of the following acts in a public place:

- (1) Simulated acts of sexual intercourse.
- (2) An exposure of one's genitals, or of one's breasts, if female, except in a place designed for same.

Section 6: Vandalism.

- (a) Public Property

- (i) It is unlawful for any person to vandalize, deface, or in any way alter the appearance or operation of any public property or park in the City.
 - (ii) No person shall spit on the floors, walls, or other parts of any public building in the City.
- (b) Private Property
- (i) It is unlawful for any person to vandalize, deface, or in any way alter the appearance or operation of any private property without the consent of the owner.
 - (ii) This subsection shall not be construed as affecting any remedy the private property owner may have at law.

Section 7: Graffiti.

- (a) Purpose and Intent.
- (i) Graffiti promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism. Without prompt removal of graffiti, other properties become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to live and work.
 - (ii) The Council members of the City of Dunwoody in the interest of public health, safety, and welfare further find and declare that to be truly effective in the deterrence, eradication, and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance.
- (b) Definition. “*Graffiti*” means the defacing, altering, modifying, changing, drawing, damaging, or destroying by spraying or use of paint, or marking of ink, dye, or any other similar substances on public and/or private buildings, structures, and places, an inscription, slogan, drawing, or modification.
- (c) Prohibited Acts.
- (i) It shall be unlawful for any person(s) to deface, alter, modify, change, draw, damage, or destroy by spraying or use of paint, or marking of ink, dye, or any other similar substance on public and/or private buildings, structures and places, an inscription, slogan, drawing, or modification, or otherwise damage private or public property in contradiction of other City ordinances, by or through the application of “graffiti” as defined herein.
 - (ii) It shall be unlawful for any person owning or otherwise being in control of any real property within the City to maintain, permit, or allow any graffiti to be placed upon any structure located on such property when the graffiti is visible from the street or other public or private property after notice, in writing, has been given to such person in control of said property.
- (d) Graffiti Notice of Removal. It shall be unlawful for any person, firm, or utility owner, or acting as a manager, tenant, or agent for the owner of the property, to permit the application of or fail to remove graffiti within ten (10) business days after written notice is given.

(e) Graffiti Notice Procedure.

- (i) Whenever the City becomes aware of the existence of graffiti or other unsightly conditions on any property, including structures or improvements within the City, a police officer or code enforcement officer shall give or cause to be given, written notice to the property owner, and/or owner's agent, tenant, or manager to remove such graffiti or other unsightly condition therefrom.
- (ii) The notice required by this section may be served in any one of the following manners:
 - (A) By personal service or registered or certified mail addressed to the owner or the last known address of said owner. If this address is unknown, the notice will be sent to the property address. Such notice shall allow ten (10) days from the date of notice for removal of identified graffiti.
 - (B) In the event that the City has attempted to notify the proper person under (A) above, and is unable to do so, then the City is authorized to post the above notice on the main entrance of the building.
- (iii) For the purposes of giving the notice to the owner of the property, the person shown as the owner of said property on the ad valorem tax records of the City shall be sent such notice at the address shown thereon unless the City receives actual notice that another person owns said property. In addition, the owner may notify the City that the tenant, pursuant to a written lease, has control of the property or has control of that portion of the building which is the subject matter of this ordinance and, in the event the City receives such notice, the City shall notify the tenant of the notice of removal as provided in this ordinance and proceed against the tenant and not the owner. Provided, however, as to any violation of this ordinance in existence on or before January 1, 2009, any notice of removal shall give sixty (60) days for the removal thereof.

(f) Accepted Graffiti Removal Products.

- (i) The Planning and Zoning Department shall maintain a list of substances designated as acceptable products to remove specific types of graffiti from specific surfaces (unpainted brick, concrete, stone, etc.). This list shall include detailed information on the appropriate use of such designated substances. Appropriate use of said substances by property owners shall constitute compliance with the requirement to remove graffiti contained therein.
- (ii) Uses of any of these items or any other items are at the risk of the user. The City does not recommend the products. Use may discolor or damage the finish of the surface the products are used on.

(g) City Cost Declared Lien. If the person, agent, firm, manager, or owner of the property fails to remove the graffiti by the end of the ten (10)-day notification period, the City Manager may cause the graffiti to be removed and charge to the property owner the expenses incurred. Upon the completion of removal by the City, the City shall provide the proper party written notice consistent with subsections (d) and (e) above of the total cost of removal and shall give the proper party thirty (30) days to pay the total cost incurred by the City. If the expenses of the removal remain unpaid for a period of 60

days, the City may place a lien against the property upon which said nuisance existed and from which the graffiti was removed.

- (h) Graffiti Penalty. Any person who is convicted of violating this Article shall be punished in a manner consistent with Chapter 1, General Provisions, Article 3, Violations, Section 1 of this Code of Ordinances. The Municipal Court may suspend or probate a portion or all of its sentence upon such conditions to include but not be limited to the restoring of the property so defaced, damaged, or destroyed, or other remedial action.

Section 8: Tampering with Utilities.

It is unlawful for any person to disturb, tamper with, or remove any guy wires from any electric power pole, utility pole, or telephone pole located within the City.

Section 9: Loitering and Prowling

- (a) It shall be unlawful for a person to be 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 the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself 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 and explain his 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.

Section 10: Fines and Punishment

Any person found guilty of violating the any provision of this Article shall be punished in a manner consistent with Chapter 1, General Provisions, Article 3, Violations, Section 1 of this Code of Ordinances.

Article 2: False Alarms

Section 1: Definitions

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

- (a) *“Burglar alarm system”* means any assembly of equipment or device, whether mechanical or electrical, arranged or designed to signal by any means the occurrence of an illegal entry into the premises or any other activity requiring urgent police attention and to which the Police Department may reasonably be expected to respond; provided, however, that this definition does not include alarm systems installed exclusively for the

purpose of signaling an ongoing robbery, fire or medical emergency, and does not include any alarm system installed in a motor vehicle.

- (b) “*Burglar alarm user*” means the person or other entity which owns, leases, rents, manages, possesses, or has primary control over the premises in which a burglar alarm system is installed or maintained.
- (c) “*Chief of Police*” means the Chief of the Dekalb County Police Department, Dekalb County Sheriff or the Chief of Police of the City of Dunwoody Police Department if such department is established or his/her designee.
- (d) “*False alarm*” means the activation of a signal from a burglar or fire alarm system which elicits a response from the Police or Fire and Rescue Department when there is in fact no emergency or actual or threatened criminal activity necessitating such a response. This definition includes, without being limited to, any burglar alarm system signal activated as a result of weather, negligence, accident, mechanical failure, electrical failure, electrical surge, signals activated intentionally in non-emergency situations, and signals activated where the actual cause of such activation is unknown. There is a rebuttable presumption that an activated burglar or fire alarm system signal is a false alarm if the responding personnel, after following normal procedures in their response and investigation, find no evidence of unauthorized entry, criminal activity or other emergency. An activated alarm system signal shall not be considered a false alarm if:
 - (i) The Police or Fire and Rescue Department is notified to cancel its response by the alarm user or the alarm user’s monitoring agent prior to the time emergency personnel arrive at the premises;
 - (ii) The burglar or fire alarm system signal was intentionally activated by an individual based upon a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed;
 - (iii) The burglar or fire alarm system signal was activated by lightening or other act of nature resulting in an electrical surge which causes physical damage to the alarm system and which damage is evidenced by the written report of a licensed alarm system contractor who conducted an inspection of the system at the premises and personally observed such physical damage.
- (e) “*Fire alarm*” means any assembly of equipment or device, whether mechanical or electrical, arranged or designed to signal by any means the occurrence of a fire at the premises.
- (f) “*Police Department*” means the Dekalb County Police Department, Dekalb County Sheriff or City of Dunwoody Police Department, if such department is established.
- (g) “*Premises*” means the building or structure or any portion of a building or structure in which there is installed or maintained a burglar alarm system.

Section 2: Purpose and Intent.

Based on the experiences of surrounding municipalities and communities and their law enforcement officers, the Council finds that emergency response to false alarms creates additional risks to public safety by diverting limited public safety resources away from both real emergencies and normal patrol activities intended and designed to prevent criminal acts.

Therefore, the purpose of this Article is to promote public safety by making burglar and fire alarm users in the City of Dunwoody directly responsible for preventing false alarms.

Section 3: Registration Required.

- (a) No later than 5 business days following the installation of any burglar or fire alarm system, the alarm user shall provide the following information to the Chief of Police:
 - (i) The complete name, address, and phone number of the alarm user;
 - (ii) The names of all persons authorized to enter the premises and deactivate the alarm system signal as well as all phone numbers at which such persons can be reached;
 - (iii) The name and telephone number of the alarm user's monitoring agent, if any; and
 - (iv) If known, the name and telephone number of the person or entity which installed the alarm system.
- (b) Any changes in the information set forth in subsection (a) of this section must be reported to the Chief of Police within 5 business days. Burglar or fire alarm users utilizing alarm systems installed prior to the effective date of this Article shall provide the information set forth in subsection (a) of this section to the Chief of Police no later than sixty (60) days following such effective date, unless sooner requested in writing by the Chief of Police.
- (c) The registration requirements of this subsection shall not apply where the alarm system is installed in premises used exclusively for residential purposes; provided, however, upon the occurrence of the third false alarm within any calendar year at any such premises used exclusively for residential purposes, the Chief of Police is authorized to require in writing that the alarm user comply with the registration requirements within (five) 5 business days.
- (d) All alarm systems installed before incorporation of the City of Dunwoody shall be registered with the Chief of Police within six (6) months after the effective date of this Article. The City may authorize the City Manager to obtain the registration information from the Police Chief of Dekalb County, Georgia.

Section 4: Deactivation Mechanism Required.

No burglar or fire alarm system installed after the effective date of this Article shall be used unless such system is equipped with a mechanism or device that automatically deactivates the alarm system signal no later than 30 minutes after activation.

Section 5: Monitoring and Enforcement.

The Chief of Police shall receive and maintain all information required to implement the terms of this Article and shall be responsible for its enforcement. This Article shall be enforced by the issuance of a citation and prosecution in the City Municipal Court, or other court of competent jurisdiction.

Section 6: Prohibitions.

- (a) It shall be a violation of this Article for any burglar or fire alarm user to cause, allow or permit three or more false alarms in any calendar year. It shall also be a violation of this

Article for any burglar or fire alarm user to fail or otherwise refuse to comply with the registration or equipment requirements set forth in Sections 3 and 4 of this Article.

- (b) No person shall intentionally make, turn in, or report a false alarm of fire or false request for police or ambulance assistance, or aid or abet in the commission of such an act.

Section 7: Penalties.

Upon conviction, violations of this Article shall be punished as follows:

- (a) For the third and each subsequent false alarm that occurs at the same premises within any twelve-month period, a fine shall be assessed in the amount of \$50.00; provided, however, that no burglar alarm user shall be assessed fines in excess of \$200.00 for false alarms that occur at the same premises in any 24-hour period.
- (b) For all other violations of this Article, not including false alarms, a fine shall be assessed in the amount of \$100.00 and, in addition thereto, the violator may be enjoined by the Municipal Court Judge from continuing the violation.
- (c) Each violation shall constitute a separate offense.
- (d) False alarms shall not be counted for purposes of assessing the penalties provided for in subsection (a) of this section so long as such false alarms occur within 10 days following the installation of the burglar or fire alarm system.

Article 3: Nuisance Abatement

Section 1: Findings of the existence of nuisances

- (a) The governing authority of the City of Dunwoody, Georgia, finds and declares that within the city limits of the City of Dunwoody there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the City or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the City and the State; and that public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
- (b) It is further found and declared that in the City of Dunwoody where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the city and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. The governing authority of the City finds that there exist in the City dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire,

accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or other conditions exist rendering such dwellings, buildings or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the City, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.

- (c) It is the intention of the governing authority that this Article shall comply with and does comply with O.C.G.A § 41-2-9(b) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the City of Dunwoody, Georgia.

Section 2: Continued use of other laws and ordinances

It is the intent of the Mayor and City Council that nothing in this Article shall be construed to abrogate or impair the powers of the courts or of any department of the City to enforce any provisions of any local enabling act, charter, or ordinance or regulation nor to prevent or punish violations thereof; and the powers conferred by this Article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Section 3: Definitions

- (a) “Applicable codes” means:
 - (i) Any optional housing or abatement standard provided in chapter 2 of Title 8 of the O.C.G.A as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
 - (ii) Any fire or life safety code as provided for in Chapter 2 of Title 25 of the O.C.G.A.; and
 - (iii) Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. Chapter 2 of Title 8 after October 1 provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.
- (b) “Closing” means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.
- (c) “Drug crime” means an act which is a violation of O.C.G.A. Article 2 of Chapter 13 of Title 16, known as the Georgia Controlled Substances Act.
- (d) “Dwellings, buildings, or structures” means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or

intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term 'dwellings, buildings, or structures' shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

- (e) “Governing authority” means the Mayor and Council of the City of Dunwoody, Georgia.
- (f) “Municipality” means any incorporated city within the State of Georgia.
- (g) “Owner” means the holder of the title in fee simple and every mortgagee of record.
- (h) “Parties in interest” means:
 - (i) Persons in possession of said property and premises;
 - (ii) Persons having of record in the county in which the dwelling, building, or structure is located any vested right, title, or interest in or lien upon such dwelling, building, or structure or the lot, tract, or parcel of real property upon which the public health hazard or general nuisance exists based upon a fifty-year title examination conducted in accordance with the title standards of the State Bar of Georgia;
 - (iii) Persons having paid an occupational tax to the governing authority for a location or office at the subject building or structure; or
 - (iv) Persons having filed a property tax return with the governing authority as to the subject property, building, or structure.
- (i) “Public authority” means any member of a governing authority, any housing authority office, or any office who is in charge of any department or branch of the government of the municipality, county, or state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the County or Municipality.
- (j) “Public officer” means the officer or officers who are authorized by O.C.G.A. Section 41-2-7, Section 41-2-8 and Sections 41-2-9 through 41-2-17 and by this Article adopted under Section 41-2-7, Section 41-2-8, and Sections 41-2-9 through 41-2-17 to exercise the powers prescribed by this Article or any agent of such officer or officers.
- (k) “Repair” means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.

- (l) “Resident” means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

Section 4: Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthful

- (a) It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the City, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances.
- (b) The City Manager shall appoint or designate the City Code Enforcement Officer, City Fire Marshal, City Fire Chief, City Police Chief, Building Inspector, and their designees as public officer(s) to exercise the powers prescribed by this Article.
- (c) Whenever a request is filed with the public officer by a public authority or by at least five (5) residents of the City charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and parties in interest in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and the parties in interest; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance. The summons shall notify the owner and parties in interest that a hearing will be held before a court of competent jurisdiction as determined by O.C.G.A. Section 41-2-5, at a date and time certain and at a place within the City where the property is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in court. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing;

- (d) If after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any parties in interest that have answered the complaint or appeared at the hearing, or order:
- (i) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes; or
 - (ii) If the repair, alteration, or improvement of the said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property.

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

Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction.

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

"This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its

use in connection with drug crimes or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."

- (f) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against to cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and the City are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.
- (g) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.
- (h)
 - (i) The lien provided for in subsection (g) of this section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the Clerk of Superior Court in Dekalb County and shall relate back to the date of this filing of the lis pendens notice required under subsection (g) of O.C.G.A. § 41-2-12. The Clerk of Superior Court shall record and index such certified copy of the order in the deed records of Dekalb County and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the Clerk of Superior Court, the public officer shall forward a copy of the order and a final statement of costs to the County Tax Commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem tax, including specifically Chapter 4 of Title 48 of the O.C.G.A.; provided, however that the limitation of O.C.G.A. §48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The Tax Commissioner shall remit the amount collected to the governing authority of City of Dunwoody. Thirty (30) days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.
 - (ii) The Tax Commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 et seq. unless such costs are

waived by resolution of Dekalb County. Any such amount collected and retained for administration shall be deposited in the general fund of Dekalb County to pay the cost of administering the lien.

- (iii) The City may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the municipality agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (iv) Where the abatement action does not commence in the Superior Court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the Superior Court under O.C.G.A. Section 5-3-29.
- (v) The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article.
- (vi) Nothing in this Article shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Section 5: Determination by public officer that under existing ordinances dwellings, buildings, or structures are vacant and sample conditions of nuisances

- (a) The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwelling, buildings, or structures; or of other residents of the City. Such conditions include the following (without limiting the generality of the foregoing):
 - (i) Defects therein increasing the hazards of fire, accidents or other calamities;
 - (ii) Lack of adequate ventilation, light, or sanitary facilities;
 - (iii) Dilapidation;
 - (iv) Disrepair;
 - (v) Structural defects;

- (vi) Uncleanliness; and
 - (vii) Other additional standards, which may from time to time be adopted and referenced herein by ordinance amendment.
- (b) The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

Section 6: Powers of public officers

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

- (a) To investigate the dwelling conditions in the City in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (b) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (c) To enter upon premises for the purpose of making examinations; provided; however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (d) To appoint and fix the duties of such officer, agents, and employees as he or she deems necessary to carry out the purposes of this Article; and
- (e) To delegate any of his or her functions and powers under the Ordinance to such officers and agents as he or she may designate.

Section 7: Service of Complaints and other filings

- (a) Complaints issued by a public officer pursuant to this Article shall be served in the following manner:
 - (i) At least fourteen (14) days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable.
 - (ii) Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three (3) business days of filing the complaint and at least fourteen (14) days prior to the date of the hearing.

- (iii) For interested parties whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in Dekalb County once a week for two consecutive weeks prior to the hearing.
- (b) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided above on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

Article 4: Animals

Section 1: Cruel Treatment of Animals Prohibited.

- (a) No person shall willfully place within reach of any domestic animals, any substance that is poisonous or harmful to the animal.
- (b) No person shall willfully and unjustifiably kill or injure any domestic animal other than livestock maintained for food purposes.

Section 2: Disposal of Deceased Animals.

No person shall place any dead animal upon his or her premises or upon the premises of any other person or allow any dead animal to remain upon his or her premises or any dead animal belonging to the person to remain upon the premises of another without disposing of same or causing the animal to be properly removed or disposed of within 24 hours.

Section 3: Removal of canine fecal matter.

- (a) It is unlawful for any person owning, possessing, harboring, or having care, charge, control, or custody of any dog not to remove any feces left by that dog on any sidewalk, gutter, street, lot, public park, or other public area or public property.
- (b) Dog waste shall be immediately removed by placing said matter in a closed or sealed container and thereafter disposing of it in a trash receptacle, sanitary disposal unit, or other closed or sealed refuse container.
- (c) Each and every violation of this code section shall be punishable to the extent provided by Chapter 1, General Provisions, Article 3, Violations, Section 1, of this Code of Ordinances.
- (d) This section shall not apply to visually impaired persons who have the charge, control, or use of a guide dog.

Article 5: Urban Camping Prohibited

Section 1: Definitions.

For purposes of this Article,

- (a) “*Camp*” shall mean residing in or using a public street, sidewalk, or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any substantial prolonged period of time; regularly cooking or preparing meals; or other similar activities.
- (b) “*Storing personal property*” shall mean leaving one’s personal effects, such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. This term shall not include parking a bicycle or other mode of transportation.
- (c) “*Public park*” includes all municipal parks, public playgrounds, public plazas, attractions, and monuments.
- (d) “*Public street*” includes all public streets and highways, public sidewalks, public benches, public parking lots, and medians.

Section 2: Public parks.

It shall be unlawful to camp or to store personal property in any park, as defined above, owned by the City.

Section 3: Public streets.

It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street, as defined above.

Section 4: Other public property—blocking ingress and egress.

It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property so as to interfere with ingress or egress from buildings.

Section 5: Warning.

No person may be arrested for violating this code section until he or she has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning issued, he or she is subject to arrest for urban camping.

Section 6: Exceptions.

This code section shall not be construed to prohibit the following behavior:

- (a) Persons sitting or lying down as a result of a medical emergency;
- (b) Persons in wheelchairs sitting on sidewalks;
- (c) Persons sitting down while attending parades;
- (d) Persons sitting down while patronizing sidewalk cafes;
- (e) Persons lying down or napping while attending performances, festivals, concerts, fireworks, or other special events;
- (f) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;
- (g) Persons sitting on seats in bus zones occupied by people waiting for the bus;

- (h) Persons sitting or lying down while waiting in an orderly line outside a box office to purchase tickets to any sporting event, concert, performance, or other special event;
- (i) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters, or awaiting social services, such as provision of meals; or
- (j) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage.

Article 6: Clean Indoor Air

Section 1: Title

This Article shall be known, cited, and referred to as the City of Dunwoody Clean Indoor Air Ordinance.

Section 2: Findings and Purpose

- (a) The City Council does hereby adopts the findings of Dekalb County that:
 - (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy non-smokers, including heart disease, stroke, respiratory disease, and lung cancer.
 - (2) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.
- (b) Accordingly, the City of Dunwoody City Council finds and declares that the purposes of this Article are:
 - (1) To protect the public health and welfare by prohibiting smoking in public places and public and private places of employment; and
 - (2) To guarantee the right of non-smokers to breathe smoke-free air; and
 - (3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 3: Definitions

The following words and phrases, whenever used in this division, shall be construed as defined in this section:

Child care facility means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children under seventeen (17) years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the State Board of Human Resources, as defined by O.C.G.A. § 49-5-3, as amended.

Dining area means an interior or exterior (such as porch, patio or courtyard) area containing a counter or tables upon which food is served.

Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

Employer means any person who employs the services of an individual person.

Enclosed means closed in by a roof and at least three (3) sides with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.

Establishment means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. The term "establishment" includes but is not limited to the following:

- (1) Automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale;
- (2) Grocery, pharmacy, specialty, department and other stores which sell goods or merchandise;
- (3) Service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products;
- (4) Barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public;
- (5) Video arcade, pool hall, and other amusement centers;
- (6) Offices providing professional services such as legal, medical, dental, engineering, and architectural services;
- (7) Banks, savings and loan offices, and other financial establishments;

- (8) Hotels and motels and other places that provide accommodations to the public; and
- (9) Restaurants and cafeterias.

Freestanding bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

Health care facility means any licensed general or specialized hospital, institutional infirmary, public health center, or diagnostic and treatment center, as defined by O.C.G.A. § 31-7-1(2), as amended.

Intermediate care (nursing) home means any long-term custodial care facility that provides for the physical and mental welfare of the aged.

Personal care home means a residential facility having at least twenty-five (25) beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals, or boarding facilities which do not provide personal care. Personal care homes shall also mean residential care facilities for the elderly.

Place of employment means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias and snack bars, conference and meeting rooms, lobbies and reception areas. A private residence is not a place of employment unless it is used as a childcare facility, an adult day care facility, or a health care facility. The dining area of a restaurant shall be treated as a place of employment under this Article.

Public place means any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, restaurants, stores, waiting rooms, lobbies, reception areas, hallways, public transit, restrooms, enclosed shopping malls, elevators, service lines, service stations, offices providing professional services, banks and other financial institutions, educational, recreational and health care facilities, child care facilities, auditoriums, theaters, arenas, meeting rooms, repair shops, automobile dealerships, convention halls, bowling facilities, polling places, and bingo games. Porches, courtyards or decks with a contiguous connection to a public place shall be considered a public place. A private residence is not a public place unless it is used as a childcare facility, an adult daycare facility or a healthcare facility.

Restaurant means any establishment or area which is primarily devoted to the serving of food to the public or guests and which contains a dining area. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a freestanding bar area as previously defined. The term "restaurant" shall include any dining area located within a health care, educational, or childcare facility. Food courts within enclosed shopping malls shall be treated as restaurants under this Article.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Service line means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

Section 4: Prohibited Smoking

Except as otherwise provided in this Article, smoking is prohibited in all public places and places of employment within the City of Dunwoody.

Section 5: Prohibition of smoking applicable to City property

This Article shall apply to all enclosed facilities including buildings and vehicles owned or operated by the City of Dunwoody.

Section 6: Reasonable distance

Smoking may occur outdoors but no less than twenty (20) feet from any entrance to any public place or place of employment where smoking is prohibited.

Section 7: Exceptions

(a) The smoking prohibition shall not apply in the following areas:

- (1) "Freestanding bar" areas;
- (2) Retail tobacco stores;
- (3) Adult Cabarets and Adult Motion Picture Theaters, as defined by this Code;
- (4) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility;
- (5) Any property owned or leased by municipalities, the State of Georgia, or the federal government;

- (6) Designated smoking rooms in hotels and motels rented by guests provided that such designated smoking rooms shall not comprise more than twenty-five percent (25%) of the total number of rooms available for rent; and
 - (7) Outdoor areas of places of employment, except where an owner or employer declares that the outdoor area is a smokefree environment, as provided in this Article.
- (b) Notwithstanding any other provision of this Article, any owner, operator, manager or other person who controls any establishment described in this Article may declare that the entire establishment is a non-smoking establishment.

Section 8: Employer's Responsibility

- (a) It is the responsibility of employers to provide a smoke-free workplace for all employees of public places, and places of employment but employers are not required to make expenditures or structural changes to create a smoke free work area.
- (b) Each employer having an enclosed place of employment located within the City of Dunwoody is encouraged to adopt, implement, make known and maintain a written smoking policy that incorporates the smoking prohibitions of this Article.
- (c) The written smoking policy should be provided to all employees.

Section 9: Posting of signs and notification

- (a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building where smoking is prohibited by this Article, by the owner, operator, manager or other person having control of such building or area.
- (b) Every public place where smoking is prohibited by this Article shall have posted at every entrance into a public place and place of employment a conspicuous sign clearly stating that smoking is prohibited.
- (c) Notice of the provisions set forth in this Article shall be given to all applicants for a business license in the City of Dunwoody.

Section 10: Enforcement

- (a) Any police officer, as defined by Georgia law, or City of Dunwoody Code Enforcement Officer may issue a citation for any violation of this Article.
- (b) Any citizen who desires to register a complaint under this Article may initiate enforcement with the Chief of Police or designee or the City of Dunwoody Code Enforcement.

- (c) Any owner, operator or manager of any establishment regulated by this Article shall inform persons whom they witness violate this Article of the appropriate provisions, and request compliance. In the event persons violating this Article refuse to comply with this Article after being informed by such owner, operator, or manager, the person smoking, and not the owner, operator, or manager, shall be subject to an action for violation of this Article.

Section 11: Nonretaliation

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment as afforded by this Article.

Section 12: Violations and Penalties

Any person who violates any provision of this Article shall be subject to the following penalties:

- (1) A fine not exceeding fifty dollars (\$50.00) for a first violation;
- (2) A fine not exceeding seventy-five dollars (\$75.00) for a second violation of this Article within one (1) year; and
- (3) A fine not exceeding one hundred dollars (\$100.00) for each additional violation of this Article within one (1) year.

Section 13: Other applicable laws and disclaimer

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. By regulating smoking, the City is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the City, its officers nor its employees are liable in money damages to any person who claims that any breach of this Article caused injury.

Article 7: Miscellaneous Offenses

Section 1: Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:30 a.m. and 6:00 p.m. on days that school is in session, or until 10:00 p.m. at those schools which have extended sessions, who is not a regularly-enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and been identified to the principal or the principal's agent and received written permission to remain on the premises.

Section 2: Unauthorized persons not to remain in school buildings when requested to leave.

It shall be unlawful for any person to enter and remain in any public, private or parochial school or on surrounding school grounds after being directed to leave by the principal of the school or designated agent.

Section 3: Creating a disturbance at schools.

It shall be unlawful for any person to create a disturbance in any private, public or parochial school or on the surrounding school grounds or on the fields or grounds lawfully used for school activities while such recreational areas are in use or other activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

Section 4: Begging and soliciting alms by accosting or forcing oneself upon the company of another.

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

Accosting means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his/her person, or upon the property in his/her immediate possession.

Ask, beg or solicit means and includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms.

Forcing oneself upon the company of another means continuing to request, beg or solicit alms from a person after that person has made a negative response, blocking the passage or the individual addressed or otherwise engaging in conduct which could reasonably be construed as intended to compel or force a person to accede to demands.

- (b) Exceptions: Except when performed in the manner set forth in subsections (d)(1) or (d)(2) of this section, or in any of the locations set forth in subsections (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (c)(8) or (c)(9) of this section, it shall not be unlawful to ask, beg or solicit money or other things of value.

- (c) Location: It shall be unlawful for any person to solicit money or other things of value:

- (1) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;
- (2) Within 15 feet of the entrance to or exit from any public toilet facility;
- (3) Within 15 feet of an automatic teller machine, provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
- (4) Within 15 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;
- (5) In any public transportation vehicle, or in any bus or subway station, or within 15 feet of any bus stop or taxi stand;

- (6) From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the owner or passengers of such vehicle;
 - (7) From any person(s) who are waiting in line for entry to any building, public or private, including, but not limited to, any residence, business or athletic facility;
 - (8) Within 15 feet of the entrance or exit from a building, public or private, including, but not limited to, any residence, business, or athletic facility.
- (d) Manner: It shall be unlawful for any person to solicit money or other things of value:
- (1) By accosting another; or
 - (2) By forcing oneself upon the company of another.
- (e) Who may press charges: Persons who may press charges under this Code section include not only the victim of the prohibited solicitation, but also any person who witnesses such conducted, including, but not limited to, police officers, security officers, hotel personnel, and bystanders. Evidence to support conviction for violation of this Code section may include, but is not limited to, the testimony of such witness or witnesses, videotape evidence of the violation, and/or other admissible evidence.

Section 5: Treasure hunts.

- (a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- Treasure hunts* means advertising campaigns conducted for the purpose of promoting the sale of any merchandise, commodity or service of any business or profession conducted for private or corporate gain, whereby some article, thing or token is hidden within the corporate limits of the City and clues as to the locations of such article, thing or token are given by any form of advertising, either by newspaper, radio or television or in any other manner, but shall not include private social parties involving no element of commerce or gain.
- (b) It shall be unlawful for any person to conduct or aid and abet in the conducting of any treasure hunt, as defined in this section, within the corporate limits of the City.

Section 6: Moving household goods at night.

It shall be unlawful for any person to move or transport household goods and furnishings from one place of residence to another between the hours of sunset and sunrise without first having obtained a permit to do so from the Police Chief. All applications for permits shall be filed more than 24 hours prior to the time of actual moving.

Section 7: False representations to police or any city department.

It shall be unlawful for any person, knowingly and willfully and with intent thereby to mislead, either in such person's own behalf or in behalf of others, as principal or as agent, to make or file orally or in writing any false representations of fact to any police officer of the City or to any Department of the city government.

Section 8: Public Urination or Defecation

It shall be unlawful to defecate or urinate on the streets or sidewalks, or in the halls or elevator of public or commercial buildings, or on any property open to public view in the City.

Section 9: Residential Picketing

- (a) The term "picket" or "picketing" shall refer to the following types of activity:
 - (1) Patrolling or stationing oneself at a residence, bearing some insignia or sign designed to persuade or protest;
 - (2) Staging a public or private protest of any kind;
 - (3) Obstructing passage to or from a residence; or
 - (4) Promoting a strike or a boycott at an individual residence.
- (b) It shall be unlawful for any person to picket or engage in picketing upon, before or about the private residence or home of any individual.

Section 10: Restriction on Outdoor Water Use

- (a) Purpose and Intent. The Mayor and Council of the City of Dunwoody have determined that as situations arise which require conservation of outdoor water use, as mandated by rules of the Georgia Department of Natural Resources Environmental Protection Division, the City shall preserve the health, safety and welfare of the citizens of the City through enforcement of this Section.
- (b) Adoption of Restrictions. The City of Dunwoody hereby adopts by reference the outdoor water use rules mandated by the Georgia Department of Natural Resources Environmental Protection Division ("EPD"), from time to time, as the same are modified by the Dekalb County Water System (the "EPD/Dekalb County Restrictions"). A copy of the current EPD/Dekalb County Restrictions is incorporated herein, and a current copy of the same as modified shall be maintained in the office of the City Clerk. Any violation of the EPD/Dekalb County Restrictions in effect from time to time shall constitute a violation of this Section.
- (c) Enforcement. Every City police officer, fire fighter and Code Enforcement Officer shall be authorized and empowered to enforce the provisions of this Section through the issuance of non-criminal or criminal citations. Such officers shall have the authority to enter property for the purpose of inspection for compliance. A record of each citation shall be maintained. If personal contact is made with the violator, the officer shall require immediate compliance.

- (d) Civil Penalties and Fines. Any person or entity accused of violating any provision of this Section shall, with respect to the first violation, be provided with a written warning. Any person accused of violating any provision of this Section for a second time shall be issued a non-criminal citation requiring the payment of a civil penalty to the City of Dunwoody in the amount of two hundred fifty dollars (\$250.00). For a third violation of this Section, a violator shall be issued a non-criminal citation requiring a payment of a civil penalty of five hundred dollars (\$500.00) to the City of Dunwoody. All penalties are due and payable on or before ten (10) days following the date of the citation.
- (e) Appeals. Any alleged violator may appeal a citation to the City Manager within the ten-day period for the payment of the penalty. All such appeals shall be in writing and shall state the basis for the appeal. If a timely appeal is filed, the penalty shall be stayed until a determination is made by the City Manager. If the City Manager determines that a violation has not occurred or that a reasonable hardship exists justifying the waiver or reduction of the penalty, the City Manager may reduce or waive the penalty. If any penalty is not paid or appealed within ten (10) days of the date of the citation, or paid within three (3) days after the denial of an appeal by the City Manager, the violator shall be issued a criminal citation requiring an appearance in Municipal Court.
- (f) Criminal Penalties and Fines. A criminal violation of this Ordinance, as delineated in subsection (e) above, shall constitute a misdemeanor, and punished in a manner consistent with Chapter 1 (“General Provisions”), Article 3 (“Violations”), Section 1 of this Code of Ordinances.

Section 11: Hospitals and Doctors to make certain reports to Police

All hospitals, doctors and pharmacists in the City shall immediately report to the Police Department, the name and nature of the case of any person brought under its or his care who is suffering from wounds of any description, inflicted by a firearm, knife or other weapon or instrument; any unidentified person; and any person who is the victim of an accident or who might come under its or his care and whose case is of a suspicious nature.

Section 12: Prohibited Noises

- (a) Noises considered loud or disturbing to health deemed nuisance. It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise, or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in the City.
- (b) Acts declared violations. The following acts are declared to be loud, disturbing, and unnecessary noise in violation of this section, but this enumeration shall not be deemed to be exclusive:
 - (1) *Horns, signaling devices.* The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place in the City except as a danger warning, the creation of any unreasonably loud or harsh sound

by means of any signaling device and the sounding of any device for an unnecessary and unreasonable period of time, the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust, and the use of any signaling device when traffic is for any reason held up.

- (2) *Radios, phonographs and similar devices.* The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with a volume louder than necessary for the convenient hearing of the person who is in the room, vehicle, or chamber, in which the machine or device is operated, and who is a voluntary listener thereto. The operation of any set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. on weekdays and between the hours of 12:00 a.m. and 7:00 a.m. on weekends and holidays when the audibility of the prohibited noise is measured from property line of adjacent properties or the public right-of-way of the property shall be prima facie evidence of a violation of this section.
- (3) *Loudspeakers and amplifiers for advertising.* The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.
- (4) *Yelling, shouting, hooting, whistling, or singing.* Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 11:00 p.m. 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 office, dwelling, hotel, or other type of residence or of any person in the vicinity.
- (5) *Animals and birds.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.
- (6) *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 city authorities.
- (7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motorboat except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

- (8) *Defect in vehicle or load.* The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.
- (9) *Loading, unloading and opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers.
- (10) *Construction or repair.*
- (i) Construction of any type, including, but not limited to, the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, automatic nailers or staplers, or any similar equipment attended by loud or unusual noise, shall be prohibited during the following times:
- Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Years Day (observed), Memorial Day (observed), Independence Day (observed), Labor Day (observed), Thanksgiving Day and Christmas Day (observed)).
- (ii) Landscape contractor using any type of motorized mowers or mechanical blowers and other equipment which create loud and excessive noise shall be prohibited, during the following times:
- Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Years Day (observed), Memorial Day (observed), Independence Day (observed), Labor Day (observed), Thanksgiving Day and Christmas Day (observed)).
- (11) *Schools, courts, places of worship and hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, place of worship, or court, while in use, or adjacent to any hospital which unreasonably interferes with the normal operation of that institution, or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in those streets indicating a school, hospital, or court street.
- (12) *Hawkers, peddlers and vendors.* The shouting and crying of peddlers, hawkers, and vendors which disturb the peace and quiet of the neighborhood.
- (13) *Noise to attract attention.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale.

- (14) *Transportation of metal rails, similar materials.* The transportation of rails, pillars, or columns of iron, steel, or other material over and along streets and other public places so as to cause loud noises or as to disturb the peace and quiet of those streets or other public places.
- (15) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from the blower or fan is muffled and the engine is equipped with a muffler device sufficient to deaden the noise.
- (16) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes. The use of sound trucks for noncommercial purposes during hours and in places and with volume as would constitute this use as a public nuisance, provided that the provisions of this section shall not apply to or be enforced against:
 - (i) Any vehicle of the City while engaged in necessary public business;
 - (ii) Excavations or repairs of streets by or on behalf of the City, County, or State at night when the public welfare and convenience renders it impossible to perform such work during the day; or
 - (iii) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

Section 13: Fortunetelling

It shall be unlawful for any person to engage in or participate in the practice of fortunetelling, phrenology, clairvoyance, palmistry or other kindred practices, businesses or professions where a charge is made or a donation accepted for such services. This section does not apply to astrology.