

Mayor

Derek Easterling

City Manager

Jeff Drobney, ICMA-CM

City Clerk

Lea Alvarez, CMC



Council

Madelyn Orochena

Tracey Viars

Jonathon Bothers

Antonio Jones

Anthony Gutierrez-Leon

City Council Work Session

Meeting Agenda

February 23, 2026 6:30 PM

Council Chambers

(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

Livestream: www.kennesaw-ga.gov/publicmeetings/

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1. **Invocation**
 2. **Pledge of Allegiance**
 3. **Call to Order**
 4. **Announcements**
 5. **Presentations**
 6. **Old Business**
 7. **New Business**
 8. **Committee and Board Reports**
 9. **Public Hearing(s)**
 - A. **Ordinance: Chapter 6 Amendments**
Consideration for approval of an Ordinance to amend Chapter 6, entitled, "Alcoholic Beverages" of the Code of Ordinances of the City of Kennesaw, Georgia.
 10. **Consent Agenda**
 - A. **Minutes: February 9, 2026 Work Session**
Approval of the February 9, 2026 City Council Work Session Minutes
 - B. **Minutes: February 16, 2026 Regular Meeting**
Approval of the February 16, 2026 City Council Regular Meeting Minutes
 11. **General and Administrative**
 12. **Public Safety**

13. Information Technology

14. Public Works and Building Maintenance

- A. **Resolution: Landscaping at Southern Museum**
Consideration for approval of a Resolution accepting the proposal from Creative Landscape Group to replace landscaping at the Southern Museum.
- B. **Resolution: 2026 Community Development Block Grant Subrecipient Agreement**
Consideration for approval of a Resolution authorizing the program year 2026 Community Development Block Grant (CDBG) Subrecipient Agreement between Cobb County and the City of Kennesaw.

15. Recreation and Culture

- A. **Resolution: All-Star Lighting and Electrical Services Proposal**
Consideration for approval of a Resolution accepting the proposal from All-Star Lighting and Electrical Services, Inc. to install poles and upgrade lighting for baseball fields 5 and 6 at Adams Park.
- B. **Resolution: 2026 Athletic Association Facility Use Agreement**
Consideration for approval of a Resolution renewing the 2026 Athletic Association Facility Use Agreement with the Kennesaw Baseball and Softball Association.

16. Community Development

17. Public Comments

18. City Manager's Report

- A. Reports, Discussions, and Updates

19. Mayor's Report

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

20. Council Reports & Discussions

21. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

22. Adjourn



Item Report

TO: The Honorable Mayor and City Council

FROM: Meredith Staton, Assistant Finance Director

DATE: February 23, 2026

TITLE: **Ordinance: Chapter 6 Amendments**
 Consideration for approval of an Ordinance to amend Chapter 6, entitled, "Alcoholic Beverages" of the Code of Ordinances of the City of Kennesaw, Georgia.

Summary:

The Business License Office, operating under the jurisdiction of the Finance Department, proposes amendments to Chapter 6, titled "Alcoholic Beverages," of the Code of Ordinances for the City of Kennesaw, Georgia. The proposed revisions are intended to modernize the Code of Ordinances to more accurately reflect the needs of both local business and City staff.

The initial amendment applies to licensees within the City of Kennesaw who currently hold a retail pouring license. Amendment 6-32(c) will allow licensees with such a license to obtain an additional package wine sales license allowing them to sell unopened bottles of wine to customers as a part of the same transaction in which a prepared meal is purchased.

The subsequent amendments will apply to all licensees within the City of Kennesaw. Amendment 6-54(a) and Amendment 6-54(b) will clarify the renewal procedures providing licensees with clear expectations while also affording staff with the necessary time to process renewal applications by December 31 of each year. Additionally, these amendments will inform businesses of the penalties associated with the failure to renew their licenses within the specified deadline.

These proposed amendments have been revised in consultation with the Finance Director, City Manager, and City Attorneys to ensure conformity with the standards and expectations of the City of Kennesaw. Notification of this hearing was published in the Marietta Daily Journal as required by law.

Recommendation:

Finance Director recommends approval.

Fiscal Impact:

N/A

Attachments:

1. ORD 2026 - Chapter 6 Amendments
2. Chapter 6 Amendments 2.17.2026

CITY OF KENNESAW
GEORGIA

ORDINANCE NO. 2026-__

AN ORDINANCE TO AMEND CHAPTER 6, ENTITLED
“ALCOHOLIC BEVERAGES,” OF THE CODE OF ORDINANCES
OF THE CITY OF KENNESAW, GEORGIA, SO AS TO ADD OR
AMEND SECTIONS 6-32(c), 6-32(d), 6-52(h), 6-54(a), and 6-54(b) OF
SAID CHAPTER REGARDING THE RENEWAL DEADLINE FOR
ALCOHOL LICENSES, THE ALLOWANCE OF RESTAURANTS TO
SELL WINE BY THE BOTTLE IF A MEAL IS PURCHASED, AND
THE ASSOCIATED LICENSE FEE TO DO THE SAME.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

SECTION 1. The text of said Section 6-32 is incorporated as a part of this ordinance as if fully set out herein. Chapter 6, Section 6-32(c) and 6-32(d) are amended by adding the following:

Sec. 6-32. – Separate licenses required for package sales and sales for on-premises consumption

...

(c) A licensee authorized for the sale of alcoholic beverages by the drink for on-premises consumption may obtain a package wine sales license for the sole purpose of selling unopened bottles of wine to customers as part of the same transaction in which a prepared meal is purchased. Such package wine sales shall:

(1) Be restricted to wine, fortified wine, or champagne only;

(2) Be sold for off-premises consumption only;

(3) Occur only during the hours permitted for package wine sales under this chapter;

(4) Require the issuance of the package wine sales license in addition to the on-premises consumption license; and

(5.) Not authorize general package sales activity.

(d) This license may be revoked independently for violation of this subsection or any other applicable provision of this chapter.

SECTION 2. The text of said Section 6-52 is incorporated as a part of this ordinance as if fully set out herein. Chapter 6, Section 6-52(h) is amended by adding the following:

Sec. 6-52. - License fees; duration.

(h) Other licenses:

Wine package sales for off-premises consumption.....\$ 300.00

Brewpub license, with/without sales of wine or malt beverage by the package.....\$3,000.00

Bottle house..... 2,000.00

Off premises service of distilled spirits; malt beverage; and/or wine, fortified wine, and/or hard cider
.....500.00

Package/pouring license, each location.....850.00
(not including fee for growler shops as provided in section 6-52(h) below)

SECTION 3. The text of said Section 6-54 is incorporated as a part of this ordinance as if fully set out herein. Chapter 6, Section 6-54(a) and 6-54(b) are hereby amended by striking and adding the following:

Sec. 6-54 – Payment of fees, number of license, renewal; annual sales statement, inspection of records.

(a) On an annual basis, the licensee shall submit a renewal application on renewed information and application forms prescribed by the city no later than November 30 December 31 of each year in order to renew the license. The annual license fee under this chapter for those seeking renewal is also due on November 30th of a license accrues and is due and payable on December 31 of each year. The failure of the licensee to submit a completed renewal application and pay the renewal fee by November 30 will result in a ten percent penalty in addition to the timely fee. If the licensee has not submitted a completed application and/or has not paid the renewal fee by December 31, the license will automatically expire. timely submit renewed information and application and/or the failure of the licensee to timely pay the annual license fee shall result in the expiration of the license.

(b) Upon expiration of the license, the licensee must shall cease the sale of alcoholic beverages until the licensee obtains a valid license under this chapter. If the licensee fails to cease the sale of alcoholic beverages, the licensee shall be subject to the penalty as provided in section 6-53, in addition to other remedies under State or Federal Law state or federal law and/or actions taken by the License Review Board license review board and/or the Mayor and City Council. mayor and city council.

SECTION 4. BE IT ORDAINED THAT all ordinances, parts of ordinances, or regulations in conflict herewith are repealed as of the effective date of this ordinance.

SECTION 5. BE IT FURTHER ORDAINED THAT should any section of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 6. BE IT FURTHER ORDAINED THAT this ordinance shall become effective on March 2, 2026, and after its adoption and execution by the Mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of March 2026.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

Chapter 6 - ALCOHOLIC BEVERAGES

Footnotes:

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Editor's note— Ord. No. 2008-18, §§ 1, 2, adopted May 19, 2008, updated and amended the former Ch. 6, §§ 6-1—6-5, 6-31—6-71, 6-86—6-109, 6-131, 6-132 and enacted a new Ch. 6 as set out herein. Formerly, Ord. No. 2000-02, adopted Feb. 21, 2000, amended in its entirety the former Ch. 6, §§ 6-1—6-132, which pertained to similar subject matter and derived from the Code of 1986, §§ 3-2-21(9), 9-1-1—9-1-8, 9-1-21—9-1-53, and 9-1-61—9-1-81; and Ord. of 12-18-89; Ord. No. 95-9, § 9-8-3(m), 3-20-95; Ord. No. 95-10, §§ 9-1-9, 9-1-10, 3-20-95; Ord. No. 1997-06, 3-17-97. Subsequently, Ord. No. 2002-31, § 1, adopted Aug. 5, 2002, amended in its entirety the former Ch. 6, §§ 6-1—6-132, as amended by Ord. No. 2000-02.

Cross reference— Amusements and entertainments, ch. 14; buildings and building regulations, ch. 18; businesses, ch. 22; offenses, ch. 62; parks and recreation, ch. 66; taxation, ch. 82; unified development code, app. A.

State Law reference— Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.

ARTICLE I. - IN GENERAL

Sec. 6-1. - Definitions.

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

Agent means an individual who does not have an ownership interest in the licensed premise, who meets the requirements of section 6-40 of this chapter, who is employed in a managing capacity and designated by the owner of the licensed premise to be licensee.

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine from whatever source or by whatever process produced.

Alcoholic beverage means and includes alcohol, distilled spirits, malt beverage, hard cider, wine or fortified wine.

Amusement park means a place owned and operated permanently and exclusively for the purpose of providing amusement, attraction, and entertainment to the general public through the means of rides, live entertainment and games either on a seasonal or year round basis, which park has at least 25 rides and 50 games or attractions and the area of the amusement park is comprised of at least 80 acres exclusive of parking.

Applicant means the person making application for a license under this chapter for the sale of alcoholic beverages and, if applicable, any individual designated by that person to be licensee.

Bar means any premises at which a retailer licensed pursuant to this chapter to sell alcoholic beverages derives 75 percent or more total annual gross revenue from the sale of alcoholic beverages for consumption on the premises. A licensee of a bar shall obtain and keep in force and affect a food service permit.

Barrel means 53 gallons for purposes of distilled spirits.

Barrel means 31 gallons for purposes of malt beverages.

Bottle house means any place of business open to the public or any private club providing food or entertainment in the normal course of business that allows guest, patrons or members to bring in and to consume alcoholic beverages on the premises.

Brewer means a manufacturer of malt beverages.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation of not more than 10,000 barrels of malt beverages manufactured on the licensed premises in any calendar year solely for retail sale. For purposes of this paragraph, the term "eating establishment" means an establishment that is licensed to sell distilled spirits, beer, malt beverages, or wine and that derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Business area means any street length between intersections where 50 percent or more of the linear feet of that street length is in use for business purposes.

Business license manager or supervisor means the individual employed by the City of Kennesaw who handles alcoholic beverage licenses, as such position presently exists, or by whatever name the position may be designated in the future.

Case means a box or receptacle containing not more than 288 ounces of malt beverages on the average.

Church means a permanent building where persons regularly assemble for religious worship and shall be publicly designated as a church.

City means the City of Kennesaw.

City manager means the duly appointed city manager of the City of Kennesaw or the city manager's designee.

Closed function means an event not open to the general public that must have a written, limited guest list prepared at least 48 hours in advance of the date on which the closed function is to occur, and which occurs on property owned and maintained by the city. No pay-at-the-door guest or drop-ins are to be permitted. Alcoholic beverages may be served without charge and consumed at closed functions, but the offer and sale of alcoholic beverages at such functions is prohibited; except that a general admission fee permitting attendance at the closed function may be collected in advance.

College means only such state, county, city, church or other colleges that teach the subjects commonly taught in the common colleges of this state, and shall not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Convenience store means a retail establishment whose primary business is the sale of pre-packaged or unprepared food and grocery items and which may also sell fuel products, household items, or tobacco products and other goods commonly associated with the same.

Conviction means adjudication of guilt, plea of guilty, plea of nolo contendere or the forfeiture of a bond when charged with a crime, but shall not include a discharge under provisions of what is commonly referred to as the State of Georgia First Offender Act, being O.C.G.A. § 42-8-60, or as may be amended from time to time.

Craft beer means an alcoholic beverage brewed by an independent brewer that is obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager, mead, beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.

Denatured alcohol or denatured distilled spirits means alcohol, as defined in O.C.G.A. § 3-1-2, to which denaturants have been added in order to render the alcohol unfit for beverage purposes or internal human medicinal use. As used in connection with brewpub sales, *infra*, the term "denaturants" means materials authorized for use pursuant to Chapter 1 of Title 27 of the Code of Federal Regulations, and as the same may now or hereafter be amended.

Distilled spirits means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including but not limited to, all fortified wines.

Distiller means a manufacturer of distilled spirits.

Distance means the measurement in linear feet from the center of the primary entrance as designated by the fire marshal for the proposed premises of a licensee in a direct line to the primary entrance as designated by the fire marshal of the applicable structure at issue under sections 6-42 and 6-43 of this chapter. A radius shall be measured from the center of the primary entrance as designated by the fire marshal of the proposed premises of any licensee. Should the proposed premises contain two or more primary entrances, the distance shall be the shortest measurement in linear feet from the center of any of the primary entrances as designated by the fire marshal to the primary entrance of the applicable structure at issue.

Drink means any spirituous liquor not in its original package served for consumption on the premises, which may or may not be diluted by any other liquid.

Family means any person related to the holder of an alcoholic beverage license within the first degree of consanguinity or affinity as determined according to civil law.

Farm winery means a domestic manufacturer of wine in quantities of less than 100,000 gallons of wine per calendar year, that is licensed by the state pursuant to O.C.G.A. § 3-6-21.1, or as may be amended from time to time. Provided a license is issued as required by this chapter, a farm winery is authorized to sell wine by the package, by the drink and operate a wine tasting facility on the premises of the farm winery without additional license requirements, except as is required by state or federal law. For purposes of this section, the tasting room shall be limited to a single room. Licensed premises means the premises for which the farm winery license is issued or property located contiguous to the farm winery and owned by the winery.

Food caterer means any person whose primary business is the preparation of food for consumption off the premises.

Fortified wine means an alcoholic beverage containing more than 21 percent of alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy. The term does not include hard cider.

Fruit grower means any person who grows peaches, apples, pears, grapes or other perishable fruits in this state and who manufactures distilled spirits from the perishable fruits grown in this state.

Good cause for discontinuing operations shall mean the licensee discontinued operations for a period of more than three months as a direct result of reasons beyond his or her control such as: an Act of God; civil disobedience of someone other than the licensee; delays caused by a governmental entity; fire; flood; material shortages; a natural disaster; a riot; strikes; and/or war.

Good cause for failure to open shall mean the licensee was unable to open the business within the allotted time for reasons beyond his or her control such as delays caused by: an Act of God; a construction delay; civil disobedience of someone other than the licensee; delays caused by a governmental entity; fire; flood; material shortages; a natural disaster; a riot; strikes; and/or war.

Grocery store means a retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales of alcoholic beverages do not exceed five percent of its total gross sales.

Growler means a container capable of being properly sanitized and which has a capacity that does not to exceed 64 fluid ounces.

Growler shop means any establishment selling only malt beverages, craft beer, wine and/or hard cider and holding either a package license or a package/pouring license that allows for both package sales of malt beverages, craft beer and/or hard cider and limited consumption of malt beverages, craft beer, wine and/or hard cider on the premises, pursuant to section 6-111 of this Code. Growler shops shall not be required to have more than one entrance to the establishment in order to hold a pouring/package license and shall not be required to serve or sell food in addition to the service or sales of alcohol.

Hard cider means an alcoholic beverage that contains at least one-half of one percent of alcohol by volume which is made by the fermentation of the natural juice of apples or pears.

Hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which 50 or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least 40 people, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out in this definition for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a bar, lounge, restaurant or nightclub on their premises; and the holder of such franchise shall be included in the definition of hotel.

Indoor entertainment hall means a publicly or privately owned commercial establishment that satisfies all of the following requirements: (i) provides, professional, live musical entertainment or concerts, performed on-site indoors, at least three nights a week on average over the course of a calendar year; (ii) regularly serves prepared food, with a full service kitchen, consisting of a three-compartment pot sink, a stove or grill permanently installed, and refrigerator, all of which must be approved by the health and fire departments; (iii) is prepared to serve food every hour it is open; (iv) derives at least 25 percent of its total annual gross sales from the sale of prepared meals or foods, admission charges, ticket sales, sale of merchandise, vending sales, attendance fees, or other recreational, promotional, or operational activities; (v) does not provide any sexually related adult entertainment at any time; (vi) has at least 40,000 square feet of enclosed heated space; (vii) has an occupant capacity of at least 3,500; (viii) is located on a major thoroughfare; (ix) does not provide the sale of alcohol on Sundays, unless such establishment qualifies for Sunday sales under state law and the provisions of this chapter of the Kennesaw Code of Ordinances; and, (x) does not allow the admission of any natural person who is under the age of 21 years of age during hours when alcohol is served, except in accordance with the provisions of section 6-90 of this chapter. Indoor entertainment halls shall be allowed to sell alcoholic beverages through concession sales.

License means the authorization by the mayor and city council of the City of Kennesaw to engage in the sale of alcoholic beverages either by the package or consumption on the premises.

License review board means the board created under section 2-115 of these ordinances of the City of Kennesaw.

Licensee means a person holding any class of license issued under the terms of this chapter.

Lounge means a separate room in which alcoholic beverages are sold, connected with a part of and adjacent to a restaurant or located in a hotel as defined in this section with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least 50 people. A lounge, as defined in this section, which is operated on a different floor in the premises, or in a separate building, or is not connected to or adjacent to a restaurant, shall be considered a separate establishment and shall pay an additional license fee therefor.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager, mead, beer, craft beer, small beer, and strong beer. The term "beer" and "malt beverage" are interchangeable throughout this chapter. The term does not include sake, known as Japanese rice wine.

Managing capacity means the president or chief executive officer of a corporation, or the managing member of a limited liability company, or the general partner of a limited partnership, or a person who has responsibility for management of the operations, including sale of alcoholic beverages, or who is authorized to act on behalf of the licensee in any capacity at the location to be licensed or supervision of management of the operation, including sale of alcoholic beverages, at the location to be licensed, whether or not such person is an employee of the licensee.

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

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;
- (2) In the case of malt beverages, any brewer; and
- (3) In the case of wine, any vintner.

Minor means any natural person less than 18 years of age.

Nightclub means an establishment having a seating capacity of at least 100 people with all booths and tables being unobstructed and open to view, deriving its primary income from the sales of alcoholic beverages, and providing to its patrons a band and/or other professional live entertainment performed onsite, including, but not limited to, music, comedy, readings, dancing or acting. All nightclubs shall be equipped with air conditioning and shall maintain an adequate kitchen with a sufficient number of servants and employees for cooking, preparing and serving food and meals for their patrons, provided that nightclubs located in hotels having dining room and kitchen facilities may be excluded from the requirement of maintaining a kitchen in connection with such nightclub. The principal business of such nightclubs shall be entertainment, and the serving of food and spirituous liquors shall be incidental thereto.

Open container means any container of an alcoholic beverage which is immediately capable of being consumed from, or the seal of which has been broken.

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

Package store means a business establishment whose primary business activity is the retail sale of alcoholic beverages by the package.

Permit holder means that person authorized with a server permit and designated by the licensee to sell alcoholic beverages at the licensed premise.

Person means any individual, sole proprietor, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, limited liability company, limited partnership, limited liability partnership, general partnership or other group or combination acting as a unit, whether public, private or quasi-public. In the case of a general partnership, it includes all partners. In the case of a limited partnership, it includes the general partner. In the case of a corporation, it includes all principal shareholders. In the case of a limited liability company, it includes all members who are deemed to be principal shareholders under the definition of that term contained in this section.

Pouring license means a license that authorizes on-premises consumption of alcoholic beverages.

Principal shareholder means a person who owns any shares of a corporation with less than 35 shareholders; or, if the corporation has more than 35 shareholders, a person who owns more than five percent of the shares of the corporation, except that a person who owns shares which are publicly traded shall not be deemed to be a principal shareholder or to have a beneficial interest in the corporation based solely on the fact of stock ownership. Principal shareholder shall also include a person who owns any membership interests in a limited liability company with less than 35 members; or, if the limited liability company has more than 35 members, a person who owns more than five percent of the outstanding membership interests in the limited liability company.

Private club means a non-profit association organized and existing under the laws of the state, actively in operation within the city, which has been in existence at least one year prior to the filing of its application for a license to be issued under this chapter; and which complies with all requirements set forth in this section: it has at least 75 members who regularly pay monthly, quarterly, or semiannual dues; and, it is organized and operated exclusively for pleasure, recreation and other non-profit purposes; and, no part of its net earnings inure to the benefit of any shareholders or members; and, it owns, hires or leases a building or space therein for the reasonable use to its members with suitable kitchen and dining room space and equipment; and, it maintains and uses a sufficient number of servants and employees for cooking, preparing and serving meals for its members and guest; provided, that no member or officer, agent or employee of the club is paid or receives, directly or indirectly, in the form of salary or other compensation, any profits from the sale of spirituous liquors to the club or its members or guests beyond the amount of such salary as may be fixed by its members at any annual meetings or by its governing board out of the general revenue of the club.

Private party function means an event held by an amusement park where alcoholic beverages are provided. The licensee must submit to and have the private party function approved by the supervisor of the city's business license office provided such function does not threaten the health, safety and welfare of the participants or public. In the event the private party function is not approved by the business license supervisor, the licensee may appeal said decision to the mayor and city council of the City of Kennesaw. The mayor and city council shall have authority to approve the private party function provided the function does not threaten the health, safety and welfare of the participants or public.

Private residence means a house or dwelling wherein not less than one or more than two families customarily reside and shall not include a mobile home, an apartment house having facilities for housing more than two families, a boardinghouse or rooming house where there are five or more boarders or roomers, any residence which has been unoccupied for a period of six consecutive months immediately prior to the filing of any application for license, or any residence that shall be a nonconforming use in a commercial zone.

Properly sanitized means the container was: sanitized per the instructions of Star San sanitizer or any product that is the equivalent of Star San sanitizer; or, placed in an oven at a temperature of 340 degrees or higher for at least 60 minutes; or, washed in an automatic dishwasher for a full wash and heat dry cycle with or without the addition of detergent agents; or, sanitized in conformance with the sanitation requirements for glassware used in restaurants as set forth in the rules or regulations of the Cobb County Health Department.

Pub means any premises at which a retailer licensed pursuant to this chapter to sell alcoholic beverages derives between 50 percent and 75 percent of its total annual gross revenue from the sale of alcoholic beverages for consumption on the premises. A licensee of a pub shall obtain and keep in force and affect a food service permit.

Purchase price means the consideration received for the sale of spirituous liquors by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property, or services of any kind or nature, and also the amount for which credit is allowed by the licensee or his agent to the purchases, without any deduction there from whatsoever.

Purchaser means any person who orders and gives present or future consideration for any spirituous liquor by the drink.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly prepared and served, without sleeping accommodations, such place seating a minimum of 50 or more people, and holding a certificate of approval from the county health department. A restaurant shall maintain a full-service kitchen which consists of, at a minimum, a three-compartment pot sink, a stove or grill permanently installed and a refrigerator. A restaurant serves meals every hour that they are open and the serving of such meals shall be

the principal business conducted, with the serving of distilled spirits, beer and/or wine to be consumed on the premises as only incidental thereto. In order to be classified as a restaurant under this chapter, the licensee must derive a minimum of 50 percent of its total annual gross food and beverage sales, over any 12-month period of time, from the sale of prepared meals or food. In the case of an audit, the relevant time period shall be the 12 months immediately preceding the commencement of the audit. If the restaurant being audited has been in operation as a restaurant for less than 12 months, the audit period shall be the period of time the entity has operated as a restaurant, and the restaurant must derive a minimum of 50 percent of its total annual gross food and beverage sales for that audit period from the sale of prepared meals or food. If the restaurant previously operated as another type of business, e.g., a bar as that term is defined in this section, total annual gross food and beverage sales for the time period it has been operated as a restaurant shall be the only data relevant to the audit and the data for the period it operate as another type of business shall not be examined during the audit.

Retail consumption dealer means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

Retail establishment means any business duly licensed to engage in the retail sale of any product or service, other than alcohol, within the City of Kennesaw and that would not otherwise be permitted to sell or serve alcoholic beverages by the drink because it does not meet the definition of a bar, restaurant, wine specialty shop, pub, nightclub, lounge, indoor entertainment hall, growler shop, farm winery, brewpub, amusement park, or other such establishment licensed to sell alcohol under this Code. For purposes of obtaining a license to sell or serve alcohol by the drink, a retail establishment must be located within an entertainment district, in addition to the other requirements provided herein.

Retail sale means selling or offering for sale alcoholic beverages to any member of the public. Such term shall also include, without limitation, the sale to any member of the public of any ticket or license, or the charging of any cover charge or fee, for admission to any event or premises where alcoholic beverages are available without further charge, as well as the sale of any ticket, stamp, token or similar item which may be redeemed or exchanged for alcoholic beverages.

Retailer or retail dealer means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term means any person who sells distilled spirits in unbroken packages at retail only to consumers and not for resale.

School means only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of O.C.G.A. § 20-2-690, or as may be amended from time to time, including any public or private location that teaches the Georgia Pre-Kindergarten Program and shall not include private

schools where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught and shall not include residences where home study programs are located.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation, sodomy, bestiality, flagellation or torture in the context of sexual relations, or excretory functions in the context of sexual relations, anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism or zoerasty; or
- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence.

Spirituos or alcoholic liquors means all beverages containing alcohol, obtained by distillation or containing more than 21 percent of alcohol by volume, including fortified wines.

Tasting room means a licensed premises (defined as the premises for which the farm winery license is issued or property located contiguous to the farm winery and owned by the winery) being a single room within a farm winery where farm products are manufactured or distilled spirits are available for sample or sales as may be limited as prescribed by this chapter, state or federal law, as may be applicable and as amended from time to time.

Underage person means any person below the age at which alcoholic beverages may be legally purchased in the State of Georgia, as provided by O.C.G.A. § 3-3-23, or as may be amended from time to time.

Wholesaler means any person engaged in distribution or selling to retailers for the purpose of resale of any alcoholic beverages as defined in this section.

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

Wine specialty shop means a retail establishment which has both package sales of wine and limited consumption on the premises of wine or draft beers, under the conditions set forth in section 6-114 of this Code.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2010-13, § 1, 6-21-10; Ord. No. 2011-09, 8-15-11; Ord. No. 2012-10, 8-6-12; Ord. No. 2012-11, 9-4-12; Ord. No. 2016-10, 4-4-16; Ord. No. 2016-18, § 1, 8-15-16; Ord. No. 2016-22, 9-19-16; Ord. No. 2016-33, 11-17-16; Ord. No. 2017-10, § 1, 8-21-17; Ord. No. 2019-01, 1-22-19; Ord. No.

Sec. 6-2. - Purpose of chapter.

This chapter has been enacted in accordance with a plan designed for the purpose, among others, of promoting the health and general welfare of the community, to establish reasonable and ascertainable standards for the regulation and control of the licensing and sale of alcoholic beverages, to protect and preserve schools and churches, to give effect to existing land use and to preserve certain residential areas, with reasonable considerations, among others, to the character of the areas and their peculiar suitability for particular uses, the congestion in the roads and streets, and with a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values, and to protect against the evils of concentration of the retail outlets for alcoholic beverages in one family or to prevent undesirable persons from engaging in or having any interest in alcoholic beverages.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-3. - Compliance required.

- (a) It shall be unlawful for any person to sell or offer for sale wholesale or retail any alcoholic beverages without having first complied with the provisions of this chapter.
- (b) The city shall have the authority to conduct an audit of the books and records of any licensee and/or require regular reporting of the books and records of the any licensee to assure licensee's compliance with the provisions of this chapter. In such event, the city shall notify the licensee of the date, time and place of the audit or reporting requirements. In conducting such audit, the city may require the licensee to provide the books and records in electronic form if such books or records are maintained, in the regular course of business by the licensee, in electronic form.
- (c) Some of the business operations described in this chapter must, to continue operating as that type of business licensed to sell or serve alcohol, comply with the following:
 - (1) In the case of an indoor entertainment hall, maintain 25 percent of its total annual gross sales from the sale of prepared meals or foods, admission charges, ticket sales, sale of merchandise, vending sales, attendance fees, or other recreational, promotional, or operational activities.
 - (2) In the case of a grocery store, the sales of alcoholic beverages must not exceed five percent of its total gross sales.
 - (3) In the case of a restaurant, the licensee must derive a minimum of 50 percent of its total annual gross food and beverage sales, over any 12-month period of time, from the sale of prepared meals or food.
 - (4)

In the case of a retail establishment as defined in this chapter, in order to sell or serve alcoholic beverages by the drink to its patrons, the licensee must be located within an entertainment district as defined in this Code and may not derive more than 50 percent of its total revenue from the sales of alcoholic beverages. A retail establishment is not required to sell or serve food in addition to the service or sales of alcohol. A retail establishment must obtain a state license to sell or serve alcohol by the drink and must purchase or accept deliveries of distilled spirits only from wholesalers duly licensed under this chapter. All employees who serve alcohol at a retail establishment must obtain a valid alcohol work permit from the city. A retail establishment must comply with all local and state ordinances, regulations, and laws regarding the sale and service of alcoholic beverages. Retail establishments may not engage in the Sunday sales of alcohol.

- (5) In the case of any establishment licensed to serve alcohol that must also provide the sale of prepared meals or food and/or maintain a full-service kitchen within an entertainment district, such establishment may utilize one or more food trucks/mobile vendor trucks to satisfy the applicable requirements of a full-service kitchen and alcohol/food sales ratio under the terms of this section. The food trucks/mobile food vendors must be:
 - a. Licensed under appendix A, chapter 5.02.00 of the City of Kennesaw Unified Development Code;
 - b. Located on the same private property premises as the licensed establishment at all times that alcoholic beverages are offered for sale from any portion of the premises; and
 - c. Available, open and prepared to serve food at all times that alcoholic beverages are offered for sale from any portion of the premises.
- (d) In determining whether these entities have complied with these percentages, the City of Kennesaw shall be entitled to audit the books and records of the entities. The following shall be applicable to such audits:
 - (1) If the business has operated as that type of entity (e.g., a restaurant) for 12 months or more prior to the date on which the audit is commenced, the auditor shall consider the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the 12 months preceding the date on which the audit is commenced to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this chapter.
 - (2) If the business has operated as that type of entity for less than 12 months prior to the date on which the audit is commenced, the auditor shall consider the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the time that the business has operated as that type of entity to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this chapter.
 - (3)

If the entity operated as one type of entity, e.g., a bar as defined in this chapter, and changed to another type of entity, e.g., a restaurant as defined in this chapter, the audit shall consider only the annual gross food and beverage sales, or the annual gross sales, or total gross sales, as the case may be, during the period it operated after the change of the type of entity to determine whether the entity has maintained the required percentage set forth in the definition of that entity found in this chapter.

- (4) If the entity has failed to maintain the percentage required by the definition, the entity shall be placed on probation for a period of three months from and after the date the entity is notified of its failure to maintain the required percentage. The notification placing the entity on probation shall be in writing and provide the percentages determined as part of the audit. During that probationary time period, the entity can attempt to attain the percentage required by the definition for that entity. At the end of the probationary period, a second audit will be conducted. The second audit will audit only the annual gross food and beverage sales, or annual gross sales, or total gross sales, as the case may be, during the probationary period and whether the entity attained the percentage required by the definition for that entity during the probationary period. Should the entity fail to attain the required percentage during the second audit, the entity will be informed, in writing, that it can no longer operate as that type of entity, e.g., a restaurant that fails to maintain the percentage required by the definition for that entity will be notified that it can no longer operate as a restaurant and may operate only as a bar. Should the licensee change its entity, for instance from a restaurant to a bar, it shall be the licensee's responsibility to assure that it complies with all the requirements of these ordinances of the City of Kennesaw, including, but not limited to, any licensing applicable to that entity.
- (5) The entity may appeal the audit decision generated by a failure to meet the required percentage during the second audit. Any such decision to appeal must be made, in writing, and filed with the City of Kennesaw no later than ten calendar days from and after the entity's receipt of the decision appealed. If the results of the second audit are mailed by the auditor to the licensee, that decision of the auditor is deemed received by the licensee three days from and after the decision is mailed. The notice of appeal shall be filed with license review board and an additional copy filed with the city clerk. That notice of appeal must specify, in detail, why the entity believes the audit decisions are flawed. It shall be within the discretion of the license review board whether a hearing will be held on the appeal. If a hearing is scheduled by the license review board, the entity shall be provided written notice of such hearing no less than five calendar days prior to the date scheduled for the hearing. If the license review board upholds the auditor's decision, the entity shall have the right to appeal to the city council and mayor of the City of Kennesaw. Any such appeal to the city council and mayor of the City of Kennesaw must be in writing and filed with the city clerk and the mayor's office no later than ten calendar days from and after date on which the entity receives the decision of the license

review board. If the decision of the license review board is mailed, that decision is deemed received by the licensee three days from and after the decision is mailed. The appeal to the mayor and the city council shall contain the following: a detailed explanation of why the entity believes the audit results and the decision of the license review board is flawed; statistics showing the entity has complied with the percentage contained in the definition for that entity found in this chapter; a copy of the results of the first and second audits; and, a copy of the decision of the license review board. Failure of the entity to submit all of the appeal documents shall be fatal to the appeal. It shall be within the discretion of the mayor and city council whether a hearing will be held on the appeal. If a hearing is scheduled by the mayor and city council of the City of Kennesaw, the entity shall be provided written notice of such hearing no less than five calendar days prior to the date scheduled for the hearing.

(6) The appeals shall consider only evidence of sales during the audit periods and shall not consider evidence of any sales during the appeal periods.

(7) The entity shall be allowed to operate during the time it is appealing the decision of the audit.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2010-13, § 2, 6-21-10; Ord. No. 2020-12, § 3, 11-2-20)

Sec. 6-4. - Territorial application of chapter.

The terms and provisions of this chapter shall apply only within the corporate limits of the city.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-5. - Sale, possession, or consumption.

No alcoholic beverages shall be sold, possessed or consumed by any person on or in any public park or public property except as otherwise approved pursuant to section 6-6, section 6-71 or section 6-72 of the Code of Ordinances, Kennesaw, Georgia.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2011-09, 8-15-11; Ord. No. 2019-01, 1-22-19)

Sec. 6-6. - Consumption of alcohol; entertainment districts.

- (a) Except as provided in subsection (c) below, it shall be unlawful for any establishment licensed to sell or serve alcohol within the City of Kennesaw to dispense any alcoholic beverage in an open container for removal from the premises.
- (b) Except as provided in subsection (c) below, it shall be unlawful for any person to remove from any establishment licensed to sell or serve alcohol within the City of Kennesaw any open container of alcoholic beverage or to drink or attempt to drink any alcoholic beverage from any open container or to possess in any open container any alcoholic beverage on the streets, sidewalks, rights-of-way, and parking lots, whether public or private, within the corporate limits of the city.
- (c)

Within any area of the City of Kennesaw designated as an "entertainment district," as depicted on the maps attached and incorporated into this ordinance by reference hereto, the following regulations shall apply:

- (1) Any establishment within the boundaries of an entertainment district licensed to dispense alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, and in no other type of open container, for removal from the premises; provided, however, that no establishment shall dispense to any person more than one such open container of alcoholic beverage at a time for removal from the premises.
 - (2) No person shall remove at one time more than one open container of alcoholic beverage from the licensed premises.
 - (3) No open container in which an alcoholic beverage is dispensed and removed from the licensed premises within an entertainment district shall exceed 16 fluid ounces in size.
 - (4) No person shall hold in possession on the streets and sidewalks, in parks and squares, or in other public places within an entertainment district any open container of alcoholic beverage that exceeds 16 fluid ounces in size.
- (d) It shall be unlawful for any person to consume any alcoholic beverages while in the confines of a motor vehicle when the vehicle is parked on any city street, alley, way or parking lot within the corporate limits of the city.
 - (e) No alcoholic beverage purchased pursuant to this provision may be consumed outside the boundaries of an entertainment district or within an entertainment district on any parcel used as a church, day care center, or school, as designated by such facility's certificate of occupancy, unless specifically allowed by issuance of a special event permit in accordance with sections 6-71 or 6-72. Coolers containing alcoholic beverages in cans or bottles for personal consumption may be brought into permitted areas within the entertainment district only during events allowed by issuance of a special event permit in accordance with sections 6-71 or 6-72.
 - (f) The distance requirements set forth in sections 6-42 and 6-43 shall not apply to establishments licensed to sell or serve alcohol within an entertainment district as defined in this section.
 - (g) Establishments licensed to sell or serve alcohol in open containers within an entertainment district may allow the removal of such open containers from the premises between the hours of 5:00 p.m. and midnight on weekdays and between the hours of 11:00 a.m. and midnight on weekends.
 - (h) Any licensed establishment that allows patrons to leave the establishment with an alcoholic beverage in an open container as provided in this section shall maintain posted inside all exit doors for clear public view a map of the current boundaries of the entertainment district and a sign of at least 11 inches by eight and one-half inches that states the following:

"All patrons leaving this establishment with an alcoholic beverage in an open container do hereby assume full responsibility to consume such alcoholic beverage only if it has been served in a paper or plastic cup not to exceed 16 ounces in size and obtained from an establishment licensed to sell alcoholic beverages within the entertainment district outlined on the map below. Any individual who leaves the entertainment district with an alcoholic beverage in an open container is in violation of the Kennesaw Code of Ordinances and may be subject to a citation, arrest, incarceration, and/or fine."

- (i) The provisions of this section shall not be deemed to abrogate or otherwise impact any state law or local ordinance pertaining to public drunkenness, disorderly conduct, driving with an open container or under the influence of alcohol, or similar laws or ordinances.
- (j) No establishment licensed to sell or serve alcohol within an entertainment district will be required to offer open containers of alcohol for sale to its customers or to allow patrons to enter the establishment with open containers of alcohol purchased or obtained from outside the establishment.
- (k) The boundaries of any entertainment district within the City of Kennesaw shall be established by the mayor and council and may be amended from time to time by the mayor and council under the procedures set out in the City Charter for amending an ordinance.

(Ord. No. 2019-01, 1-22-19)

Secs. 6-7—6-30. - Reserved.

ARTICLE II. - LICENSES

Sec. 6-31. - License required for manufacture, sale.

No alcoholic beverages shall be manufactured or sold at wholesale or retail, in the original package or by the drink, nor shall any bottle house be operated except under a license granted by the mayor and city council. A farm winery is required to obtain a license as provided in this chapter for the manufacture of wine, fortified wine, or hard cider.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-11, 9-4-12)

State Law reference— Local permit or license for wholesale or retail sales of alcoholic beverages, O.C.G.A. § 3-3-2(a).

Sec. 6-32. - Separate licenses required for package sales and sales for on-premises consumption.

- (a) A licensee for the sale of alcoholic beverages by the drink or for the consumption of alcoholic beverages on the premises shall have the right to serve malt beverages, wine, fortified wine, or hard cider or allow the consumption of malt beverages, wine, fortified wine, or hard cider on the premises during the same hours as are permitted under this chapter for the serving of distilled spirits by the drink.
- (b) Licensees for the sale of distilled spirits by the drink that allow the consumption of alcoholic beverages on the premises and the sale of malt beverages by the drink shall not permit the sale of distilled spirits by the bottle or package. Such licensees shall have the right to sell wine, fortified wine, champagne, or malt beverages to the public by the bottle or package for consumption on the premises without the issuance of a separate retail license therefor.
- (c) A licensee authorized for the sale of alcoholic beverages by the drink for on-premises consumption may obtain a package wine sales license for the sole purpose of selling unopened bottles of wine to customers as part of the same transaction in which a prepared meal is purchased. Such package wine sales shall:
 - (1) Be restricted to wine, fortified wine, or champagne only;
 - (2) Be sold for off-premises consumption only
 - (3) Occur only during the hours permitted for package wine sales under this chapter;
 - (4) Require the issuance of the package wine sales license in addition to the on-premises consumption license; and
 - (5.) Not authorize general package sales activity.
- (d) This license may be revoked independently for violation of this subsection or any other applicable provision of this chapter.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-11, 9-4-12)

State Law reference— Governing authority to set forth ascertainable standards pertaining to the granting, refusal, suspension or revocation of alcoholic beverage permits or licenses, O.C.G.A. § 3-3-2(b)(1).

Sec. 6-33. - Sunday permits.

- (a) A separate permit is required for the Sunday sale of any alcoholic beverages.
- (b) Licensed establishments that derive at least 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food and licensed establishments that derive at least 50 percent of their total annual gross income from the rental of rooms for overnight lodging may apply to the business license division manager for a permit for the propose of selling alcoholic beverages for consumption on the premises on Sunday from 11:00 a.m. until Monday at 2:55 a.m. No Sunday sales of alcoholic beverages shall be made by such an establishment without first having obtained the permit provided for in this subsection. A charge of \$550.00 shall be made for issuance of such permit.

(c) Licensed establishments that have a package license for the sale of distilled spirits may apply to the business license division manager for a permit for the purpose of selling such distilled spirits on Sundays. Licensed establishments that have a package license for the sale of malt beverages, wine, fortified wine, or hard cider may apply to the business license division manager for a permit for the purpose of selling such malt beverages, wine, fortified wine, or hard cider. Sunday sales of such alcoholic beverages shall be limited to between the hours of 12:30 p.m. and 11:30 p.m., Sundays. No such Sunday sales of alcoholic beverages shall be made by an establishment holding a package license without first having obtained the appropriate permit provided for in this subsection. A charge of \$300.00 shall be made for the issuance of each such permit to any licensee holding a package license.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2008-25, § 1, 7-7-08; Ord. No. 2011-30, 12-19-11; Ord. No. 2012-11, 9-4-12; Ord. No. 2018-28, 12-3-18)

Sec. 6-34. - Application—Filing; form; contents; timing.

- (a) All persons desiring to obtain a license required under this chapter shall make written application to the city at the city hall for such privilege upon forms to be prepared and approved by the city. Such applications shall state the name and address of the applicant. If the applicant is other than an individual, the application shall state the owner of the license, the name of the proposed licensee and a d/b/a name of the proposed licensed premise, if applicable. The application shall state the address where the proposed business is to be located; the nature and character of the business to be carried on; if a partnership, the names of the partners; if a corporation, the names of the officers and principal shareholders; and such other information as may be required by the mayor and city council, the business license division manager, or the police department, and shall be sworn to by the applicant or agent thereof.
- (b) All applications for a license under this chapter shall furnish all data, information and records requested by the city, through any authorized officer, such as the business license manager or chief of police, and failure to furnish such data, information and records within 30 days from the date of such request shall automatically serve to dismiss, with prejudice, the application. Applicants by filing an application agree to produce for oral interrogation any persons requested by the city through its duly authorized representative, such as the business license manager, chief of police, or city attorney, and considered as being important in the ascertainment of the facts relative to the issuance or denial of such license. The failure to produce such persons within 30 days after being requested to do so shall result in the automatic denial, with prejudice, of such application.
- (c) All applications for license, both original and renewal, must be accompanied by a full and complete statement under oath of information relative to any and all interest, as defined in section 6-46, in retail liquor stores. This shall include:
 - (1) The names and addresses of all persons interested in the ownership of the business of selling at retail package liquor, together with any interest each person or any member of his immediate family has in any other retail liquor store;
 - (2) The ownership of the land and building where such retail business is operated;
 - (3) The amount of rental paid for such land and building and the manner in which the same is determined and to whom and what intervals it is paid;
 - (4) The names and addresses, by affidavit from the owner, lessor or sublessor of such land and building, of all persons having any whole, partial, beneficial or other interest in and to the land and building on and in which the retail liquor store is located; and

- (5) Any other information called for by the business license office or its duly authorized representative, such as the business license division manager, the police department, or city attorney.
- (d) Each application furnished under this section must be complete in its entirety before being accepted by the city for filing and processing.
- (e) As a prerequisite to the issuance of any new license under this chapter and as a prerequisite to the issuance of a renewed license under this chapter, all applicants and existing licensees shall be required to execute and deliver to the city a verified statement indicating receipt of this Code relating to alcoholic beverages.
- (f) After staff has determined that an application is complete, the request shall be heard following advertising as set forth herein at the earliest regularly scheduled meeting of mayor and city council, or as soon thereafter as possible. A decision shall be rendered not later than 45 days after the public hearing.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-35. - Same—Investigation; report.

- (a) All applications required by this chapter shall be investigated by the police department, including but not limited to, an investigation into the criteria as outlined in sections 6-34 and 6-45 of this chapter. After such investigation, the police department shall report its recommendation to the business license manager. No further action shall be taken by the city or by the applicant with respect to any application until completion by the police department of its investigation. Once the applicant has submitted all of the required information and provided any additional information requested by the business license manager or the police department, the police department shall make its recommendation.
- (b) All licensed premises shall be open for inspection by an inspector or member of the city police department, or any other person so designated by the mayor, council, city manager or chief of police.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-36. - Same—Advertisement of intent to engage in business.

- (a) All applicants for license under this chapter shall give notice of the purpose of making such application by advertisement at least one time per week for two consecutive weeks in the daily paper published in the county in which the legal advertisements of the city are carried, which notice shall contain a particular description of the location of the proposed business and shall give the name of the applicant, and if a partnership, the names of the partners, and if a

corporation, the names of the officers, and the date and time the mayor and city council will hear the application. The advertisement referred to in this section shall be of type not smaller than ten-point capital and lower case and shall be at least a one-inch column advertisement.

(b) The running of the advertisement required in this section in a newspaper may be concurrent with the time after the application for license is filed, and if the one day's advertisement in two weeks is not made before the filing of the application, the application shall state that the advertisement is being made.

(c) The applicant shall cause to be placed upon the location of the proposed business a sign or signs stating the following: " _____ license applied for. A hearing before the mayor and city council of the city shall be held on the _____ day of _____, 20 _____, whichever is applicable. All interested persons take notice." The sign or signs shall not be less than 18 inches by 24 inches, and shall face toward all public streets, sidewalks or other public property which adjoins the location so as to be clearly legible to persons using such public areas.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-37. - Same—Public hearing; approval.

All applications, with the exception of renewals under section 6-59, for license under this chapter shall be acted upon by the mayor and city council after a public hearing after advertisement as required in this article. No license shall be issued until it has been approved by the mayor and city council. All reasons for denial or approval for license shall be recorded in the minutes of the hearing. Denial of application shall be provided to the applicant in writing providing the reasons for denial and mailed to the applicant.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-38. - Same—Acceptance and consideration after rejection.

When an application for license under this chapter is denied by the city, the city shall not accept or consider an application for a license under this chapter from that applicant or licensee within 12 months of the denial.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-39. - Architectural standards.

All applicants for license shall furnish plans and renderings of the proposed premises. Such premises shall be constructed, renovated or built so as to be equal to and compatible with the surrounding neighborhood or better. The exterior shall be of finished building material such as brick, stone or wood, but not concrete block. The applicant shall comply with all building, health and similar city and county codes.

The applicant shall obtain and file with his application a certification of zoning certifying the property where the applicant shall operate his business to be zoned NS, PSC, HGB, GC, CRC, RRC, NRC, PVC or such other commercial districts as may be approved or adopted from time to time.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-40. - Citizenship, residence and age requirement.

- (a) Where the applicant for a license under this chapter is a corporation, any license for the sale of alcoholic beverages shall be applied for by and shall be issued to the corporation and either the principal shareholder thereof, or an agent, as agent is defined in this chapter.
- (b) Where the applicant for a license under this chapter is a partnership, any license for the sale of alcoholic beverages shall be applied for by and shall be issued to the partnership and either the general partner of the partnership, or an agent, as agent is defined in this chapter.
- (c) Where the applicant for a license under this chapter is a sole proprietor, any license for the sale of alcoholic beverages shall be applied for by and shall be issued to the sole proprietor, provided that the sole proprietor works in a full-time managing capacity on the licensed premises. If the sole proprietor does not work in a full-time managing capacity on the licensed premises, then the license shall be applied for by and shall be issued to the sole proprietor and an agent, as agent is defined in this chapter.
- (d) Each of the persons named in subsections (a), (b) and (c) of this section must be a U.S. citizen, or a legal alien for at least one year prior to making application.
- (e) Each of the persons named in subsections (a), (b) and (c) of this section must be 21 years of age or older at the time the application for a license is filed.
- (f) The principal shareholder in the case of a corporate applicant, the general partner in the case of a partnership applicant, the sole proprietor in the case of a sole proprietor applicant or the agent of such applicant shall be a resident of the State of Georgia at the time the application for a license is filed or renewed.
- (g) The licensee shall notify the city in writing and shall keep such notification current, of the name, address and telephone number for such licensee and the agent of such licensee at such address and telephone number for the purpose of receiving communication and notices required under this chapter.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-41. - Location of business—Districts where permitted.

- (a) *Wholesaler's license.* No license shall be issued to a wholesaler of alcoholic beverages except where the wholesale business is to be located in the area of the city which is zoned highway general business shopping center (HGB), or industrial (LI or HI).
- (b) *License for on-premises consumption.* No license for the sale of alcoholic beverages by the drink shall be issued unless the location has been zoned highway general business (HGB), planned shopping center district (PSC), neighborhood shopping district (NS), community retail commercial (CRC), general commercial (GC), neighborhood retail commercial (NRC), planned village community (PVC), central business district (CBD), or regional retail commercial (RRC), but not industrial, under the zoning laws on the city or is in use as a business under specific special use permit; provided, this subsection shall not apply to private clubs. No license shall be issued for a location that operates as a nonconforming use.
- (c) *Package distilled spirits.* No license to engage in the retail sale of distilled spirits in package form shall be issued to any person for the operation of such business except within the areas zoned highway general business (HGB), planned shopping center district (PSC), neighborhood shopping district (NS), general commercial (GC), community retail commercial (CRC), or regional retail commercial (RRC). No license shall be issued for a location that is a nonconforming use.
- (d) All licenses granted herein shall be further subject to O.C.G.A. 3-3-21, or as may be amended from time to time.

(Ord. No. 2003-08, § 1, 2-18-03; Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-42. - Same—Distance from residence; distance from housing authority.

- (a) No license for the sale of alcoholic beverages shall be granted for any location that is a distance of 300 feet or less from a primary entrance of a private residence. However, if the mayor and city council consider evidence that the property values of the residence or other residences will not be affected, that the quiet enjoyment of the premises by the residents thereof shall not be adversely affected and the grant of such license shall not have any other adverse effect on the private residence, then the mayor and city council may waive this provision. This provision shall not apply to private residences located on commercially zoned property. Wholesalers and distributors are exempt from this section.
- (b) No license for the sale of alcoholic beverages for consumption on the premises shall be granted for any location that is a distance of 300 feet or less from the primary entrance as designated by the fire marshal of any housing authority, as housing authority is defined in O.C.G.A. § 3-3-21, or as may be amended from time to time. This subsection shall not apply to any location for which a license has been issued prior to July 1, 2000, or to the renewal of such license. Nor shall this

subsection apply to any location for which a new license is applied for if the sale or alcoholic beverages for consumption on the premises was lawful at such location at any time during the 12 months immediately preceding such application.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2016-22, 9-19-16)

State Law reference— O.C.G.A. § 3-3-21.

Sec. 6-43. - Same—Distance from schools, religious assembly, parks, hospitals and public buildings.

- (a) No license shall be issued under this chapter where the place of business of the applicant is located within a radius distance of 600 feet of the primary entrance as designated by the fire marshal of any school, college campus building, religious assembly, public park, hospital, public building, or alcohol or drug treatment center owned and operated by this state or any county or municipal government therein; provided, however, that at a public hearing by the mayor and city council, the mayor and city council may waive the distance requirement of this section if satisfactory evidence shall be produced that no adverse effect to property values or the use of the facilities for the aforesaid purposes would occur if a license was granted. Wholesalers and distributors are exempt from this section.
- (b) The provisions of subsection (a) above notwithstanding, in no event shall a license be issued for:
 - (1) The package sale of any distilled spirits within 300 feet of the primary entrance as designated by the fire marshal of any religious assembly building, school building, educational building, or college campus building.
 - (2) The package sale of any wine, fortified wine, hard cider, or malt beverage within 300 feet of the primary entrance as designated by the fire marshal of any school building, or college campus building. This subsection shall not apply at any location for which a license has been issued prior to July 1, 1981, nor to the renewal of such license. Nor shall this subsection apply at any location for which a new license is applied for if the sale of wine, fortified wine, hard cider, and malt beverages was lawful at such location at any time during the 12 months immediately preceding such application.
 - (3) The package sale of any distilled spirits, wine, fortified wine, hard cider, or malt beverages within 300 feet of the primary entrance as designated by the fire marshal of an alcoholic treatment center owned and operated by this state or any county or municipal government therein. This subsection shall not apply to any business having a license in effect on July 1, 1981.
 - (4) The retail package sales of distilled spirits within 500 yards of any other business licensed to sell package liquor at retail, as measured by the most direct route of travel on the ground; provided, however, that this limitation shall not apply to any hotel licensed under this chapter. The restriction provided for in this subsection shall not apply at any location for

which a license has been issued prior to July 1, 1997, nor to the renewal of such license. Nor shall the restriction of this subsection apply to any location for which a new license is applied for if the sale of distilled spirits was lawful at such location at any time during the 12 months immediately preceding such application. In reference to O.C.G.A. § 3-4-47.

(5) Any sale of any alcoholic beverage that violates any provision of state law.

(6) Wholesalers and distributors are exempt from this section.

(Ord. No. 2016-22, 9-19-16; Ord. No. 2023-04, § 2, 5-1-23)

Editor's note— Ord. No. 2016-22, adopted Sep. 19, 2016, amended § 6-43 in its entirety to read as herein set out. Former § 6-43 pertained to location of business with respect to distance from schools, churches, parks, hospitals and public buildings and derived from Ord. No. 2008-18, § 2, adopted May 19, 2008; and Ord. No. 2012-11, adopted Sep. 4, 2012.

Sec. 6-44. - Same—Additional considerations.

The mayor and city council may take into consideration in its discretion the zoning of the surrounding area, the nature of the area, and the impact on traffic as factors in the consideration of a license application under this chapter.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-45. - Conditions disqualifying application.

- (a) No application for any license under this chapter shall be granted, retained, renewed or transferred where the application or the evidence shows any of the following conditions to exist:
- (1) Evidence that the applicant, licensee or any individual having an ownership interest in said license, has been convicted within ten years immediately prior to the filing of the application for any felony.
 - (2) Evidence that the applicant has had revoked within the last twelve months any alcohol-related license or permit issued under the police powers of any county, state, municipality, or other governmental entity.
 - (3) Evidence that the applicant or licensee is family, as family is defined in this chapter, to any distributor or wholesaler of alcoholic beverages or employees thereof. This subsection shall not restrict a farm winery from selling at retail or wholesale.
 - (4) Evidence that the applicant or licensee has failed to answer any question on the alcoholic beverage application accurately or failed to provide accurate information to the mayor and city council, license review board, police department, business license division staff or any city official or city employee.

- (b) In addition to the standards stated elsewhere in this chapter, the following standards may also apply to the issuance, retention, renewal, transfer or denial of a license for alcoholic beverages either by the package or for consumption on the premises:
- (1) Evidence that the applicant has violated any law, regulation or ordinance relating to such business within a ten-year period immediately preceding the date of application.
 - (2) Evidence that the applicant has insufficient mental capacity to conduct the business for which application is made.
 - (3) Evidence that, despite compliance with the minimum distance requirement, the type and number of schools or number of churches in the vicinity causes underage persons to frequent the area.
 - (4) Evidence that the location and type of structure could create a difficulty in police supervision.
 - (5) Evidence that there are no licenses granted in the area or that the proposed area already is adequately supplied with such licenses.
 - (6) Evidence that a license for the location would be detrimental to the property values in the area.
 - (7) Evidence that the license in that location would be detrimental to traffic conditions or that there is a lack of sufficient parking which would result in parking on the streets or adjoining property.
 - (8) Evidence that the conduct of the business creates a disturbance, congregation of intoxicated persons, congregation of underage persons, or consumption of alcoholic beverages on the premises by underage persons, or causes the police to answer complaints or make extra surveillance of the premises. More than three underage persons without supervision of a parent or one authorized by a parent shall be prima facie evidence of a congregation of underage persons.
 - (9) Evidence of unusual police observation or inspection in order to prevent the violation of any law, regulation or ordinance regulating such business, if the applicant is a previous holder of a license.
 - (10) Evidence that the application is a guise or dummy application for another person who cannot meet the qualifications of this chapter for the issuance of a license.
 - (11) Evidence that the applicant or any corporation or partnership of which the applicant is or was an officer, director, principal shareholder, general partner or managing agent is delinquent in the payment of any property tax or other tax or license fee payable to the city, the county or the state.
 - (12) Evidence that alcoholic beverages have been sold to an intoxicated person or to an underage person.

(13) Evidence that the applicant, licensee or any individual having an ownership interest in said license, has been convicted of any misdemeanor within ten years immediately prior to the filing of the application.

(c) The business license manager shall have authority to deny an application for a new license under this chapter upon a showing that any one or more of the conditions in subsection (a) exists. Upon such a denial, the applicant shall have a right to an appeal pursuant to the procedures set forth in section 6-63 herein within ten business days of the service upon the applicant or applicant's attorney of a copy of the written decision to deny on such basis. Upon the showing that any one or more of the conditions outlined in subsection (a) exists on an existing licensee, the licensee shall be entitled to notice and a hearing pursuant to the procedures set forth in section 6-63 herein prior to any action taken on said license by the city. Service upon the applicant or the applicant's attorney shall be made by delivering a copy to the applicant or applicant's attorney or by mailing it to the applicant or applicant's attorney at the person's last known address. As used in this Code section, the term "delivery of a copy" means handing it to the applicant or applicant's attorney or leaving it at the applicant's or applicant's attorney's office with a person in charge thereof or, if such office is closed or the applicant or applicant's attorney has no office, leaving it at the applicant's or applicant's attorney's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. "Delivery of a copy" also means transmitting a copy via email in portable document format (PDF) to the applicant or applicant's attorney using all email addresses provided and showing in the subject line of the email message the words "STATUTORY ELECTRONIC SERVICE" in capital letters. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his or her employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(Ord. No. 2003-34, § 1, 7-21-03; Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2019-09, § 1, 10-21-19; Ord. No. 2023-04, § 3, 5-1-23)

Sec. 6-46. - Limitations on number of licenses within a family.

- (a) No application for a retail license to sell distilled spirits in the package at retail shall be granted where any person or member of his family owns, holds or controls any interest whatsoever in more than one license to engage in the business of selling distilled spirits by the package at retail in the city.
- (b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Interest in a license shall be deemed to exist if the person involved is the owner of a license, a co-owner of a license, a partner in a partnership which owns all or any part of a license, a shareholder in any corporation organized for pecuniary gain which owns all or any part of a license, an owner, lessor, sublessor or shareholder in any corporation organized for pecuniary gain owning or leasing any real estate which is occupied by a retail liquor store or shares in any of the income or corpus of any trust fund or estate having any interest in a retail liquor store.

- (c) All applications for license, both original and renewal, must be accompanied by a full and complete statement under oath of information relative to all interest, as defined in subsection (b) of this section, in retail liquor stores. This shall include the names and addresses of all persons interested in the ownership of the business of selling at retail package liquor, together with any interest each person or any member of his immediate family has in any other retail liquor store; the ownership of the land and building where such retail business is operated; the amount of rental paid for such land and building and the manner in which the same is determined and to whom and at what intervals it is paid; the names and addresses, by affidavit from the owner, lessor or sublessor of such land and building, of all persons having any whole, partial, beneficial or other interest in and to the land and building on and in which such retail liquor store is located; and any other information called for by the city.
- (d) Any change in any relationship declared in this section must be filed with the city and failure to so file within a period of 30 days after such change is made shall be grounds for suspension or revocation of the license pursuant to the procedures set forth in section 6-63 herein.
- (e) No retail licensee or person having interest therein shall have any business or commercial transactions with a wholesaler or manufacturer of alcoholic beverage other than the purchase and payment for alcoholic beverages.
- (f) No retail license shall be approved where the licensee pays to any person any rent, management fee, or other payment based on the profits or sales of such licensed store. Any legal, accounting, management or other consulting fees and all rentals shall be in an amount which is reasonable for the area and consistent with amounts paid by other similar businesses and other retail business establishments. All retail establishments shall maintain accurate books which correctly reflect all business transactions and shall make them available for inspection and audit by the city. Such records shall be maintained for a period of seven years.
- (g) It shall be unlawful for any licensee or other person having interest therein to have any connection, either directly or indirectly, in any scheme or device to obtain an interest in a retail package store, being more than as allowed by this chapter, or to engage in any scheme or device to use another person as a quasi or dummy to obtain a retail license.
- (h) Any violation of this section shall constitute due cause to revoke any license issued under this chapter in which such violators shall have an interest.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-47. - Reserved.

Editor's note— Ord. No. 2021-09, adopted September 20, 2021, repealed § 6-47, which pertained to city official, spouse, children prohibited from interest in license and derived from Ord. No. 2008-18, adopted May 19, 2008.

Sec. 6-48. - Wholesale licenses prohibited from holding interest in other licenses.

No person who has any direct financial interest in a license for the sale of alcoholic beverages at wholesale shall hold any other license under the terms of this chapter. This section shall not apply to farm wineries.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-49. - License to be obtained within two weeks of approval; issuance.

- (a) All licenses must be obtained not later than two weeks from the date of approval of the application by the mayor and city council, and if not so obtained, the license granted by the mayor and city council shall be void.
- (b) When a license has been approved and the applicant has deposited with the city the required fee, the license shall be issued, subject to subsection (a).

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-50. - Completion of proposed licensed premises.

Where a building in which a retailer or bottle house operator intends to operate under the provisions of this chapter is, at the time of the application for such license, not in existence or not yet completed or renovated, a license may be issued for such location, provided the plans for the proposed building show clearly a compliance with the other provisions of this chapter. No sales or consumption shall be allowed in such establishment until it has been completed in accordance with the plans and is in conformity with all of the other provisions of this chapter.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-51. - Time limit for commencement of business; forfeiture for nonuse.

- (a) All holders of licenses under this chapter must within three months after the issuance of such license open for business the establishment referred to in the license. Failure to open the licensed establishment within the three-month period shall serve as an automatic forfeiture and

revocation of the unused license and no refund of license fees shall be made to the license holder. The time period in which to commence operations shall not be extended and the license revoked unless the time period to commence operations is extended by:

- (1) The license review board pursuant to the procedures set forth in section 6-63 of the Code of Ordinances, Kennesaw, Georgia; or
 - (2) The city manager or his or her designee after the licensee produces written proof in the form of an affidavit on a form approved by the city manager or his or her designee showing good cause for failure to open.
- (b) Any holder of a license under this chapter who shall begin the operation of the business as authorized in the license, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the license, shall upon completion of such three months automatically forfeit his license, which license shall, by virtue of the failure to operate, be revoked without the necessity of any further action by the city. The license shall not be revoked under this subsection if, prior to the date which is three months from and after the cessation of business, the licensee produces written proof in the form of an affidavit on a form approved by the city manager or his or her designee showing good cause for discontinuing operations. In addition to such proof, the licensee shall provide an action plan concerning the date on which operations will be commenced. If the city manager or his or her designee finds that the licensee has produced the necessary proof showing good cause for discontinuing operations, the licensee shall have until the date set forth in his action plan to commence operations. Should the licensee fail to commence operations on the date set forth in the action plan, the licensee shall automatically forfeit his or her license. Nothing in this subsection shall relieve the licensee of his or her obligations to renew his or her license as set forth in this chapter.
- (c) No license holder whose license is forfeited or revoked pursuant to this section may apply for a new alcohol license for a period of 12 months from and after the date of such forfeiture or revocation.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-10, 8-6-12)

Sec. 6-52. - License fees; duration.

- (a) The annual license fee for each classification of license under this chapter shall be set by the mayor and city council of the City of Kennesaw in the business license schedule.
- (b) The schedule of fees for each license classification under this chapter shall be on file at the Kennesaw City Hall at the business license office.
- (c) Any new license issued under this chapter shall be effective from the date of the license through December 31 of that year. Thereafter, the licensee shall be required to renew the license annually in January of each year. In the case of revocation or surrender of license before the expiration

date of that license, the holder of the license shall not be entitled to receive any refund whatsoever.

(d) Each person manufacturing or selling distilled spirits in the city shall pay any annual license as follows:

Manufacturers\$1,000.00

(and an additional \$1,000.00 for each manufacturing license for other types of alcohol in the City of Kennesaw)

Wholesalers300.00

Retail package, each location2,000.00

Pouring license, each location (including retail establishments).....3,000.00

(e) On or after July 1 of a calendar year, all initial distilled spirits license and permit fees for that year shall be one-half of the basic fees set forth in subsection (d) of this section.

(f) Each person selling malt beverages in the city shall pay an annual license fee as follows:

Manufacturers\$1,000.00

(and an additional \$1,000.00 for each manufacturing license for other types of alcohol in the City of Kennesaw)

Wholesalers300.00

Retail package, each location300.00

Pouring license, each location (including retail establishments).....550.00

(g) Each person selling wine, fortified wine, and/or hard cider in the city shall pay an annual license fee as follows:

Manufacturers\$1,000.00

(and an additional \$1,000.00 for each manufacturing license for other types of alcohol in the City of Kennesaw)

Wholesalers300.00

Retail package, each location300.00

Pouring licenses, each location (including retail establishments).....550.00

(h) Other licenses:

Wine package sales for off-premises consumption.....300.00

Brewpub license, with/without sales of wine or malt beverage by the package\$3,000.00

Bottle house2,000.00

Off premises service of distilled spirits; malt beverage; and/or wine, fortified wine, and/or hard cider500.00

Package/pouring license, each location850.00 (not including fee for growler shops as provided in section 6-52(h) below)

- (i) Each person selling any alcoholic beverage, including, but not limited to, distilled spirits, malt beverages, wine, fortified wine, or hard cider on Sunday, shall pay a license fee of \$550.00 for pouring and \$300.00 for package.
- (j) Any person holding a license granted under any subsection of this section 6-52 is eligible for applying for a license to sell and/or re-fill growlers, subject to the provisions of section 6-111. The fee for a growler license shall be the sum of \$200.00 per calendar or any portion of a calendar year, in addition to the fee for a license as provided in subsection (h) above. The application shall be submitted on forms approved by the business license manager or his or her designee. To be valid, the growler license must be approved by the mayor and city council.
- (k) The total for off-premises license fees shall not exceed the statutory maximum prescribed in O.C.G.A. § 3-11-2(e), as amended. For retail package licenses, a half year is authorized as in subsection (e) of this section.
- (l) All license fees required under this chapter shall be paid in cash, certified check, cashier's check, or credit card.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2009-06, § 1, 10-5-09; Ord. No. 2010-13, § 3, 6-21-10; Ord. No. 2011-30, 12-19-11; Ord. No. 2012-11, 9-4-12; Ord. No. 2016-10, 4-4-16; Ord. No. 2017-10, § 2, 8-21-17; Ord. No. 2020-12, § 2, 11-2-20; Ord. No. 2021-14, § 1, 11-15-21)

Sec. 6-53. - Penalty for late fee payment.

Any licensee, person or entity who fails to pay any fee, tax or other payment due to the City of any kind when due shall pay, in addition to such fee, tax or other charge, a one-time separate penalty equal to ten percent of the required fee, tax or other charge received more than 30 days after the due date.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-54. - Payment of fees, number of license, renewal; annual sales statement, inspection of records.

- (a) On an annual basis, the licensee shall submit a renewal application on forms prescribed by the City no later than November 30 of each year in order to renew the license. The annual license fee under this chapter for those seeking renewal is also due on November 30th of each year. The failure of the licensee to submit a completed renewal application and pay the renewal fee by November 30 will result in a ten percent penalty in addition to the required fee. If the licensee has not submitted a completed application and/or has not paid the renewal fee by December 31, the license will automatically expire.

- (b) Upon expiration of the license, the licensee must cease the sale of alcoholic beverages until the licensee obtains a valid license under this chapter. If the licensee fails to cease the sale of alcoholic beverages, the licensee shall be subject to the penalty as provided in the penalty as provided in section 6-53 in addition to other remedies under State or Federal Law and/or actions taken by the License Review Board and/or the Mayor and City Council.
- (c) A person doing business at more than one place shall take out and pay for a separate license for each place of business.
- (d) Each licensee shall provide the city with a certified statement prepared by his bookkeeper or accountant of the gross sales of the business for the preceding calendar year. Copies of the state sales tax returns for the same period shall be attached to the statement. Such statement must be properly notarized and certified to be true and correct by the licensee or his agent under penalty of law, and shall accompany the basic license fee payment on or before December 31 of each year.
- (e) Any holder of or applicant for an alcoholic beverage license must make available for audit any and all records concerning such business upon request of the business license division manager or his representative. The books, records, inventory, stock and facilities of any alcoholic beverage license holder or applicant for same shall be open for inspection at any time for agents of the business license office and the police department.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-55. - Supplemental requirements for the sale of spirituous liquors for on-premises consumption.

No license for the sale of spirituous liquors by the drink or for the operation of a bottle house shall be issued to any applicant who does not meet the requirements of a bar, restaurant, hotel, or private club, lounge or nightclub as defined in this chapter. No bottle house shall operate unless it shall obtain a pouring license.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-56. - Event permits.

- (a) In order to distribute or sell alcoholic beverages at an event authorized pursuant to section 6-71 of the Code of Ordinances, Kennesaw, Georgia, the applicant, who is a licensed alcoholic caterer, intending to sell such alcoholic beverages must:
- (1) Provide the city with a copy of a valid license from a county or municipality within the state which authorizes the applicant to sell alcoholic beverages for consumption on the premises or by the package for consumption off the premises.
 - (2) Provide the city with a copy of valid annual off-premise license from the city which authorizes the applicant to sell alcoholic beverages in connection with an authorized catered function.

- (3) Apply to the city for an event permit, providing the name of the applicant, the date, the applicant's address, the date or dates of the event, the time of the event, the applicant's alcoholic beverage caterer's license number.
 - (4) Pay an event permit fee as set forth in the fee schedule as approved by the mayor and city council.
 - (5) Pay local excise taxes on the total quantity of alcoholic beverages brought into the city. This subsection only applies to those licensed alcoholic beverage caterers who are domiciled in a local political subdivision other than the city.
 - (6) Maintain the original event permit in the vehicle while transporting the alcoholic beverages to the event and post it in a conspicuous location at the event for the duration of the event.
- (b) In order to distribute or sell alcoholic beverages at an event authorized pursuant to section 6-72 of the Code of Ordinances, Kennesaw, Georgia, the applicant intending to sell such alcoholic beverages must:
- (1) Provide the city with a copy of a valid liquor license from a county or municipality within the state which authorizes the applicant to sell alcoholic beverages for consumption on the premises or by the package for consumption off the premises.
 - (2) Provide the city with a copy of a valid annual off-premise alcohol license from the City of Kennesaw; or, if the applicant does not have an off-premise alcohol license from the City of Kennesaw, obtain one to submit with the application for an event permit.
 - (3) Apply to the city for an event permit, providing the name of the applicant, the date, the applicant's address, the date or dates of the event, the time of the event, the applicant's liquor license number.
 - (4) Pay an event permit fee as set forth in the fee schedule as approved by the mayor and city council.
 - (5) Pay local excise taxes on the total quantity of alcoholic beverages brought into the city. This subsection only applies to those applicants who are domiciled in a local political subdivision other than the city.
 - (6) Maintain the original event permit in the vehicle while transporting the alcoholic beverages to the event and post it in a conspicuous location at the event for the duration of the event.
- (c) The event permit is valid for the duration of the authorized event and shall expire at the end of the event. The event permit is also only valid for the sale of the same type of alcoholic beverages that the applicant is allowed to sell under his or her liquor license or off-premise license.
- (d) It shall be unlawful for any such applicant to employ any person who is less than 21 years of age who, in the course of such employment, would dispense, serve, sell, or handle alcoholic beverages. Any and all persons, regardless of the person's title or position, employed by the applicant who dispense, serve, sell, or handle alcoholic beverages at the event must have a valid

server license issued by a governmental entity within the state. That server license must be carried by the licensee and available for review on request whenever the licensee is working at the event.

- (e) It is unlawful for any person or entity to distribute or sell any alcoholic beverages in connection with an event approved under section 6-71 of the Code of Ordinances, Kennesaw, Georgia, without first having obtained an event permit as provided in subsection (a) of this section 6-56.
- (f) It is unlawful for any person or entity to distribute or sell any alcoholic beverages in connection with an event approved under section 6-72 of the Code of Ordinance, Kennesaw, Georgia, without having obtained an event permit as provided in subsection (b) of this section 6-56.
- (g) The event permit as contemplated by this section 6-56 shall be granted or denied at the sole discretion of the mayor and city council, or the city manager of the city or his or her designee.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2009-07, § 1, 10-5-09; Ord. No. 2011-09, 8-15-11)

State Law reference— O.C.G.A. § 3-11-1 et seq.

Sec. 6-57. - Requirements for sale of alcoholic beverages at an amusement park.

- (a) When an amusement park is not open to the general public, the amusement park may sell or dispense alcoholic beverages to its private party function participants. Alcoholic beverages shall not be removed from the amusement park premises, which premises shall not include the parking or amphitheater areas of the amusement park.
- (b) When the amusement park is open to the general public, the amusement park may sell or dispense alcoholic beverages at a private party function in restricted areas. Such restricted areas shall be:
 - (1) Not open to the general public;
 - (2) Not an amphitheater or parking for the amusement park;
 - (3) Contain a fence or barrier which limits access to the restricted area; and
 - (4) The location of the restricted areas has been submitted to and approved by the business license manager.

In the event a designated area is denied by the business license manager, the owner/licensee may appeal said decision within ten days of said decision pursuant to the procedures set forth in section 6-63 herein. The license review board and/or the mayor and city council shall have the authority to approve a designated area provided it meets the standards of this subsection. Alcoholic beverages shall be limited to the restricted areas only and shall not be removed from the restricted areas.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-58. - Name of license and license number to be displayed by package stores.

The license itself shall be prominently displayed so as to be visible to the public inside the licensed premises.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-59. - Renewal—Required annually.

All licensees under this chapter shall, in order to continue such business, renew their licenses annually. Renewing licenses are not required to meet the posting and advertising provisions of section 6-34 and 6-36 of this chapter or to appear before the license review board or the mayor and council when the following requirements are satisfied:

- (1) Same applicant and information as contained in the formerly approved application.
- (2) Updated background check for criminal record or alcohol violations in the past year conducted by police department.
- (3) No prior, existing, or pending violations of the alcoholic beverage ordinance.
- (4) Compliance with all state alcoholic beverage regulatory statutes and regulations.
- (5) Timely payment of renewal fees and timely submission of renewed information.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-60. - Same—Application for existing licensed premises.

Any application for renewal of a license on an existing licensed location shall not be required to meet the distance requirements set forth in this chapter, if not originally in violation; provided, that no license may be issued in violation of state distance requirements. An application for license renewal filed under this section shall meet and qualify under all other requirements of this chapter for the granting of a new license.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-61. - Transfer of license, restrictions.

Licenses, under this chapter shall not be transferable as to location or ownership, except upon approval of the mayor and city council and issuance of and payment for the license, subject to the following:

- (1) In case of the death of any person holding a license, or any interest therein, such license may, in the discretion of the city, be temporarily transferred to the administrator, executor or the lawful heirs of the deceased person, for a period of up to 60 days, provided that such transferee otherwise meets the requirements for holding an alcohol license under this section.

- (2) Nothing in this section, however, shall prohibit one or more of the partners in a partnership holding a license to withdraw from the partnership in favor of one or more of the partners, who were partners at the time of the issuance of the license. Such a withdrawal shall not however, serve to bring any new ownership into the partnership.
- (3) Nothing in this section, however, shall prohibit one or more principal shareholders in a corporation holding a license to withdraw from the corporation, who were principal shareholders at the time of the issuance of the license. Such a withdrawal shall not, however, serve to bring any new ownership into the corporation.
- (4) Should a transfer of location be approved, there shall be no pro rata return of any license fee and the new location shall be considered under and meet the requirements of a new license under this chapter. Provided, however, where a transfer of an existing location is approved and there is no change in the ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (5) It shall be deemed a change of ownership when an owner or licensee adds an additional partner or partners or an additional principal shareholder or principal shareholders.
- (6) All applications for transfer of location shall be posted as required by section 6-36.
- (7) A change in ownership as set forth in this section requires an application for a new license and the payment of a new license fee according to the procedures in this chapter.
- (8) It shall be the duty of each licensee to promptly report any changes of any kind in the ownership or distribution of ownership to the business license office.
- (9) If a licensee desires to sell the business for which the license was issued, the purchaser of the business must be informed by the licensee that the purchaser of the business must make application for and obtain a license prior to operating the business. Any transfer of the business for which the license is issued without the new owners being licensed shall cause the automatic revocation of the license.
- (10) In the event that an alcoholic beverage license is issued to a corporation and an agent, and the owner of the license desires re-issuance of the license under an alternative agent, such re-issuance shall not be deemed to be a change of ownership; provided however, that the owner of the license provide the name of a principal shareholder or alternative agent for purposes of background investigation as set forth in the Kennesaw Code of Ordinances, section 22-9. No license under this chapter shall reissue to such designated alternative person unless and until the city grants approval of such background investigation.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2019-09, § 2, 10-21-19)

Sec. 6-62. - Licenses constitute grant or privilege.

- (a) All alcoholic beverage licenses constitute a mere grant or privilege to carry on such business during the term of the license subject to all the terms and conditions imposed by this chapter and related laws and other ordinances and resolutions of the city relating to such business.
- (b) All licenses under this chapter shall have printed on the front these words: "this license is a mere privilege subject to being revoked and annulled by the mayor and city council, and is subject to amendments to this ordinance or state law upon hearing prior to revocation with or without cause."

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-63. - Procedure for suspension and revocation.

- (a) No alcoholic beverage license which has been issued or which may hereafter be issued shall be suspended or revoked except for due cause, as defined in this section, after a hearing and upon written notice to the holder of such license of the time, place and purpose of such hearing and a statement of the charge or charges upon which such hearing shall be held. Five days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the mayor or city manager may deem the circumstances to justify.
- (b) Due cause for the suspension or revocation of such license shall consist of the violation of any laws, regulations, ordinances regulating such business; the violation of regulations made pursuant to authority granted for the purpose of regulating such business; the violation of any state or federal law; any change in the area where such business is located, which change is deemed by the city council to authorize the city council to refuse the issuance of a license, including those circumstances as outlined in section 6-45; the arrest or conviction of a drug-related, alcohol or sex-related crime, or a crime involving moral turpitude; or any violation of this chapter.
- (c) The police department shall provide written notification to the mayor and city manager of any violation of this chapter or any facts that may constitute due cause for the suspension or revocation of a license. Such notification shall include facts constituting due cause and shall also include a history, if any, of previous violations of this chapter or previous findings of due cause for the probation, suspension or revocation of said license and the penalty, if any, imposed by the city for such violations or previous findings.
- (d) Upon receipt of the notification as provided in subsection (c), the city manager shall place the matter for a first due cause hearing by the license review board, provided that the licensee has not been on probation or suspension within the last 24 months from the date of the writing as provided in subsection (c).
- (e)

If the licensee has been on probation or suspension within the last 24 months from the date of the writing as provided in subsection (c), then the city manager shall place the matter for a first due cause hearing by the mayor and city council, wherein the mayor and city council shall consider suspension with or without conditions and/or probation with or without conditions, or revocation of the license.

- (f) Written notice of the time, place, and purpose of the first due cause hearing and a written statement of the charge(s) shall be provided to the licensee. Five business days prior to such hearing shall be deemed reasonable notice, but shorter or longer periods shall be authorized as the city manager or his or her designee may deem the circumstances to justify.
- (g) After the due cause hearing as provided in subsection (d), the license review board may place on probation with conditions, recommend suspension for a period of time not to exceed 12 months or recommend revocation of the alcohol license. The city manager shall send written notice to the licensee of the license review board's decision and prepare a written report to the city council regarding the decision.
- (h) In the event that the license review board recommends that the alcoholic beverage license be on probation with conditions and/or be suspended for six months or less, the owner of the alcoholic beverage license, the licensee or both may appeal to the city council by filing a written notice of appeal with the city manager within five business days starting the business day after date of service of a copy of the written notice of the license review board's decision to the owner and/or licensee. If the license review board recommends probation or suspension as provided above and the owner of the alcoholic beverage license or the licensee or both should fail to appeal such recommendation, at 12:01 a.m. on the first day following the end of the appeal period, the owner of the alcohol beverage license and the licensee shall be deemed to have waived the licensee's right to appeal such decision, subject to the provisions of subsections (i), (j), and (l) of this section. If the license review board recommends suspension for more than six months or revocation, then a second due cause hearing shall be conducted before the mayor and city council no later than the next regular meeting or special called meeting.
- (i) For those hearings conducted by the license review board wherein the license review board recommended probation with conditions or suspension for six months or less, upon review of the city manager's report, the city council shall, no later than the next regular meeting or special called meeting, either approve such recommendations or cause the matter to be placed before the mayor and council for a second due cause hearing.
- (j) In the event that the license review board recommends any probation, suspension, or revocation of a license under this section, the police department shall immediately place signage in or on the premises indicating that such recommendation has been made and the basis for such recommendation, pending review and approval by the mayor and council. Such signage shall remain in place until mayor and council shall take action on such recommendation.

- (k) In all hearings held pursuant to this section, the proceedings shall be as informal as compatible with justice and the following procedures shall prevail:
- (1) The charges and specifications against the licensee and the responses, if any, filed by the licensee shall be read into the record, unless expressly waived by the city representative and the licensee.
 - (2) The city representative shall present evidence and then the licensee shall present evidence, with the opportunity for each party to present rebuttal evidence, examination and cross examination of witnesses, and interrogation by the city manager or city council. No evidence shall be presented which is not relevant to the charges. Evidence of previous probation(s) and suspension(s) is relevant.
 - (3) The license review board and the mayor and city council, through the city manager, shall be authorized to issue subpoenas when such subpoena power is authorized by law. All testimony taken by the board shall be under oath. The board shall apply to the Kennesaw Municipal Court for the enforcement of any subpoena issued by the board.
- (l) After any due cause hearing under this section by the mayor and city council, if the mayor and city council determine that due cause exists, the mayor and city council may place on probation, suspend with or without conditions or revoke the license. The city manager shall send written notice to the licensee of the city council's decision.
- (m) In the event a license to sell alcoholic beverages is suspended as a result of selling alcoholic beverages to an underage person, an intoxicated person or an unauthorized Sunday sale, a sign issued by the city business license office shall be placed at each entrance to the facility wherein alcoholic beverages were sold with a sign providing: "THE LICENSE TO SELL ALCOHOLIC BEVERAGES ISSUED TO OWNER AND LICENSEE OF THIS BUSINESS HAS BEEN SUSPENDED FROM _____ TO _____ AS A RESULT OF SELLING ALCOHOLIC BEVERAGES TO AN UNDERAGE PERSON, AN INTOXICATED PERSON OR AN UNAUTHORIZED SUNDAY SALE".
- (n) In the event that the license to sell alcoholic beverages is revoked as a result of selling alcoholic beverages to an underage person, an intoxicated person or an unauthorized Sunday sale, a sign issued by the city business license office shall be placed at each entrance wherein alcoholic beverages were sold with a sign providing: "THE LICENSE TO SELL ALCOHOLIC BEVERAGES ISSUED TO OWNER AND LICENSEE OF THIS BUSINESS HAS BEEN REVOKED AS A RESULT OF SELLING ALCOHOLIC BEVERAGES TO AN UNDERAGE PERSON, AN INTOXICATED PERSON OR AN UNAUTHORIZED SUNDAY SALE." The sign shall stay in place for the period of suspension or in the case of a revocation for a period of 30 days.
- (o) In the event that the license to sell alcoholic beverages is revoked as a result of selling alcoholic beverages to an underage person, an intoxicated person or an unauthorized Sunday sale, or for any other violation of this chapter, the city shall not accept or consider an application for a license

under this chapter from that applicant or licensee within 12 months of the denial. A voluntary surrender of the license to sell alcoholic beverages shall be considered tantamount to a revocation of the license for purposes of this section.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2016-22, 9-19-16; Ord. No. 2021-14, § 2, 11-15-21; Ord. No. 2023-04, § 4, 5-1-23)

Sec. 6-64. - State revocation revokes city license.

Whenever the state shall revoke any permit or license to manufacture or sell at wholesale or retail any alcoholic beverages, the city license to manufacture or deal in such products shall thereupon be automatically revoked without any action by the mayor and city council.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-65. - Removal of signs where license revoked, suspended or denied.

When any license for selling alcoholic beverages is revoked, suspended or denied, all signs indicating that such beverages may be sold or purchased, including any and all advertisement signs, shall be removed from such place of business, both outside and inside. Upon receipt by the police department of notice of such revocation, suspension or denial, the police department shall take the necessary steps to see that this section is enforced.

(Ord. No. 2003-37, § 1, 7-21-03; Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-66. - False information in application.

Any material omission, or untrue or misleading information contained in or left out of an original, renewal or transfer application for any license issued under this chapter shall be unlawful, and shall be the cause for the denial thereof, and if any such license has previously been granted under these circumstances, such shall constitute due cause for the revocation of such license.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-67. - Reserved.

Sec. 6-68. - Joint sales of alcoholic beverages by the drink and by the package prohibited.

A pouring license shall not permit the sale of alcoholic beverages by the bottle or package except as provided by section 6-41. This section shall not apply to manufacturers of malt beverages, manufacturers of distilled spirits, growler shops, wine specialty shops, or farm wineries selling wine, fortified wine, or hard cider by the package.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-11, 9-4-12; Ord. No. 2016-10, 4-4-16; Ord. No. 2017-10, § 3, 8-21-17)

Sec. 6-69. - Mandatory workshop for licensee; mandatory training for permit holders.

- (a) *Licensee policy workshop.* All applicants for an alcoholic beverage license shall attend an alcohol sales and service policy workshop for owners and managers, which workshop shall be approved by the business license manager. The applicant shall attend such workshop prior to the issuance of any alcoholic beverage license. Such workshop shall be at the applicant's expense. If, at the time the application is considered by the mayor and city council, the applicant has not provided evidence that the applicant has successfully completed the alcohol sales and service training workshop, the application shall be denied. This provision shall not be waived.
- (b) *Training of permit holders.*
 - (1) Licensees are required to provide information to all permit holders on provisions of the law of this state regarding the sale of alcoholic beverages to intoxicated and underage persons and the penalties for violating such laws.
 - (2) Licensees shall provide regular information and training to all permit holders on the methods, procedures and measures to be taken in order to request, obtain and examine proper identification of patrons to be certain that such patrons are of legal age to purchase alcoholic beverages.
 - (3) Detailed records of such training, including the date, time, persons attending and substance of such training shall be maintained for a minimum of 48 months of the training. Evidence of such training records shall be made available upon request for inspection by the city.
- (c) The failure of the licensee to comply with this subsection regarding the attendance of a policy workshop and the training of permit holders shall be grounds for due cause to suspend and/or revoke the license to sell alcoholic beverages.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-70. - Permit holders of licensees—Applications, issuance, and denials.

- (a) *For whom required.* The following persons shall be required to apply for and obtain a valid server permit from the City of Kennesaw for each establishment that sells alcoholic beverages at which such person works:
 - (1) All employees and independent contractors, whether compensated or non-compensated, who sell and/or serve or who are authorized or requested or may be requested by the licensee to sell and/or serve alcoholic beverages at a premise licensed under this chapter.
 - (2)

Any person acting in a managerial and/or security capacity, except for law enforcement personnel, at the licensed premise, regardless of whether such person sells and/or serves alcoholic beverages.

(b) *Not required.* A server permit is not required of the following:

- (1) The licensee to whom an alcoholic beverage license has been issued under this chapter.
- (2) An approved substitute licensee, as approved by the business license division.
- (3) Any non-compensated person authorized by law to serve alcoholic beverages and is working at a temporary, city-sponsored event or a temporary, non-profit fundraising event for which an alcoholic beverage license has been issued under this chapter.

(c) *Application and issuance.* Except as otherwise provided, no person requiring a server permit may serve alcohol for an establishment holding a license under this chapter until such person has been issued a server permit from the Kennesaw Police Department. All applications required by this section shall be investigated by the police department and shall include, among other things, (1) a background investigation; (2) an appropriate photo taken by the Kennesaw Police Department that accurately represents the appearance of the applicant; (3) proof of acceptable identification; and (4) a copy of the applicant's Social Security card to verify that it is unrestricted. Acceptable identification for purposes of this subsection shall mean any of the following: (i) a copy of a valid Georgia photo identification issued to the applicant; (ii) a valid Georgia driver's license issued to the applicant; (iii) a valid driver's license or identification card issued by another state to the applicant along with a copy of student identification card from a college or school located in the State of Georgia; or, (iv) a valid passport together with a resident alien card or a permanent resident card issued by the United States government to the applicant. The applicant must pay a reasonable fee as determined by the city for processing and issuance of the server permit; said fee must be paid in cash or by other method of payment considered acceptable by the city. Failure to provide any of the documentation or information referenced above, or the omission or falsification of any material information in an application for server permit shall be a violation of this chapter and grounds for the denial, suspension or revocation of any such server permit.

(d) *Time limit.* All persons subject to the provisions of this section shall report to the Kennesaw Police Department for purposes of being fingerprinted and make application and be approved for a server permit before beginning work at any establishment holding a license for alcoholic beverages.

(e) *Letter of eligibility; term; fee.* Any server permit issued under this section shall expire 12 months from and after the date of issue unless earlier suspended or revoked by the mayor and city council of the City of Kennesaw. The Kennesaw Police Department may prescribe regulations for

certifying the eligibility for continued employment without the necessity of the employee being again fingerprinted. The Kennesaw Police Department may prescribe reasonable fees for certifying the eligibility for a server permit.

- (f) *List of employees to be filed.* It shall be the duty of all persons holding any license to sell alcoholic beverages to keep on file on the premises the actual current server permit or a copy of the current server permit for all persons required to have such permit who work at that establishment.
- (g) *Possession of permits by employees.* Each and every server permit holder shall, at all times during his or her working hours, have his or her server permit available for inspection at the premises of the licensee.
- (h) *Permit holder on premises.* At all times that the business is open, the licensee shall have at least one server permit holder on the premises.
- (i) *Other grounds for denial of server permit.* In addition to the other requirements in this section, the Kennesaw Police Department shall not issue server permit to any applicant:
 - (1) Who is not a citizen of the United States or an alien admitted for permanent residence and who has been granted employment authorization to work within the United States by the United States Department of Homeland Security or a person who has otherwise been granted employment authorization by the United States Department of Homeland Security to work within the United States.
 - (2) Who has been convicted within three years immediately prior to the application for a server permit of:
 - a. Any felony under the laws of any state or of the United States of America;
 - b. For prostitution, pandering, letting premises for prostitution, or any charge relating to the sale of alcoholic beverages.
 - c. Two or more convictions for any drug related offense or any alcohol related offense not involving the sale of alcoholic beverages by the applicant; or,
 - d. For whom there exists any outstanding warrant charging such person with any crime described in this section, provided that this section shall not apply to private clubs as defined in this chapter.
 - (3) For purposes of this section, "convicted or conviction" shall be defined to include a verdict of guilt, guilty plea, nolo contendere plea, first offender plea, or bond forfeiture in any court of competent jurisdiction.
- (j) *Appeal of denial of server permit.* Any applicant who is not issued a server permit for any reason shall have the right to appeal such decision within five business days from the service of a copy to the applicant of the written notice of that denial. The appeal must be made in writing to the Kennesaw City Clerk, who shall then set a date and time for a hearing on the appeal before the

Kennesaw license review board, at which time the applicant shall have the right to appear, be heard, and introduce evidence. The applicant's appeal shall set forth, in writing, all reasons that the applicant believes a server permit should be issued. Failure of the applicant to set forth such reasons shall be fatal to the appeal and the appeal shall be denied and the denial of the server permit upheld. The license review board shall have the authority to require the city to issue a server permit if the license review board feels the circumstances justify such an issuance despite the requirements of this section. If the license review board upholds the denial of the permit, the applicant may appeal that decision to the mayor and city council of the City of Kennesaw within ten business days from the service of a copy to the applicant of the written notice of the license review board's decision by filing a written notice of appeal to the city manager. The applicant's written notice of appeal to the mayor and the city council shall also set forth all reasons that the applicant believes a server permit should be issued. Failure of the applicant to set forth such reasons shall be fatal to the appeal and the appeal shall be denied and the denial of the server permit upheld. The mayor and city council shall have the authority to require the city to issue a server permit if they feel the circumstances justify such an issuance. If an applicant is denied a server permit and that denial is upheld on any appeal, the applicant will not be allowed to apply for a server permit for a period of six months from the date of such denial or, if the applicant appealed, from the date of the final decision on that appeal. For purposes of this section, service may be accomplished by any method set forth in section 6-45(c).

(k) *Grounds for suspension, revocation, probation.* No server permit issued under this section shall be suspended, revoked, or placed on probation except for due cause as defined in this subsection, and after a hearing and upon written notice to the permit holder of the time, place, and purpose of such hearing and a statement of the charge or charges upon which such hearing shall be held. Five business days prior to such hearing shall be deemed reasonable notice, but shorter or longer periods of notice may be authorized by the city manager. "Due cause" for the suspension or revocation of the server permit shall consist of the violation of any laws or ordinances regulating the sale of alcoholic beverages or the violation of any state or federal law or local ordinances set out in this section; or for the omission or falsification of any material in any application; or for any reason which would authorize the refusal of the issuance of a permit; or any violation of this chapter. All hearings shall be before the license review board and shall be conducted in the manner provided in section 6-63 of this chapter. After the hearing, if the license review board determines due cause exists, the license review board may suspend, revoke, or place on probation for a maximum of 12 months, with or without conditions, the server permit. The permit holder whose server permit was suspended, revoked, or probated by the license review board may appeal to the mayor and city council of the City of Kennesaw pursuant to section 6-63 of this chapter.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2010-13, § 4, 6-21-10; Ord. No. 2010-23, 12-20-10; Ord. No. 2019-09, § 3, 10-21-19; Ord. No. 2020-03, § 1, 3-2-20; Ord. No. 2021-14, § 3, 11-15-21; Ord. No. 2023-04, § 5, 5-1-23)

Sec. 6-71. - Closed function.

The requirements for obtaining a closed permit function are as follows:

- (1) The organization sponsoring any closed function which seeks to serve alcoholic beverages must first apply for and obtain a special permit from the business license department in order to serve alcoholic beverages at the closed function. This permit must be posted in a conspicuous location at the closed function at all times during the event. The special permit shall specify the hours in which the closed function is permitted to function.
- (2) The organization sponsoring any closed function which seeks to serve alcoholic beverages must hire an off-duty City of Kennesaw police officer to monitor the function. The city manager or his/her designee shall have the discretion to allow the sponsoring organization to hire an off-duty police officer from another jurisdiction to monitor the function if the circumstances warrant.
- (3) The special permit as contemplated herein shall be granted or denied at the sole discretion of the business license department.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2019-09, § 4, 10-21-19)

Sec. 6-72. - Approved events.

The possession, transportation, consumption, and sale of alcoholic beverages on any public property are permitted at:

- (1) At an event at which the possession, transportation, consumption, and sale of alcoholic beverages on, in, or over public property is approved by the mayor and city council; or,
- (2) At an event at which the possession, transportation, consumption, and sale of alcoholic beverages on, in, or over public property is approved by the city manager of the city or his or her designee.
- (3) At any establishment licensed as an eating or drinking establishment that holds a current encroachment permit pursuant to section 22-481.

(Ord. No. 2011-09, 8-15-11; Ord. No. 2016-22, 9-19-16)

Sec. 6-73. - Regulations for sales by manufacturer of distilled spirits.

- (a) A license to manufacture distilled spirits in the city shall include the right of a licensed distiller to sell up to 750 barrels of distilled spirits per calendar year to individuals on such distiller's licensed premises for personal use and not for resale, subject to the following terms and conditions:

- (1) Such retail sales of distilled spirits shall only be made to an individual who is physically on such distiller's licensed premises and is of the age required by O.C.G.A. § 3-3-23 and Kennesaw Code Section 6-89;
- (2) A maximum of three of such distiller's licensed premises shall be permitted to make such retail sales. If such distiller has more than one licensed premises, such distiller shall annually designate the specific licensed premises, up to a maximum of three, from which such distiller has elected to exercise its limited right to sell distilled spirits pursuant to this subsection and shall provide notification of such designation to the City of Kennesaw and the Georgia Department of Revenue for each calendar year;
- (3) Such retail sales made for consumption on the premises shall not be subject to a daily maximum amount;
- (4) Such retail sales made for consumption off the premises shall not exceed a maximum of 4,500 milliliters of distilled spirits per individual per day;
- (5) Such distiller shall only make such retail sales of distilled spirits that such distiller has distilled, rectified, blended, aged, or bottled at one or more of its licensed premises;
- (6) Such distiller shall only make such retail sales of distilled spirits for which such distiller is the sole owner of the brand and brand label;
- (7) Beginning on April 1, 2022, and continuing thereafter, such distiller shall only make such retail sales of distilled spirits at a licensed premises at which such distiller reports on-site production volume, unless such licensed premises:
 - a. Operates under the same federal distilled spirits permit of a licensed premises of such distiller at which such distiller reports on-site production volume;
 - b. Is designated under paragraph (2) of this subsection as one of such distiller's licensed premises for retail sales;
 - c. Is used for aging distilled spirits transferred from such distiller's on-site production volume in wooden containers for a period exceeding one year at such licensed premises; provided, however, that such licensed premises may also be used for aging distilled spirits transferred to such licensed premises as permitted under subsection (d) of this Code section; and
 - d. Has physically located at such licensed premises at all times during such calendar year not less than 500 barrels of distilled spirits owned by such distiller that are being aged in wooden containers; and
- (8) Beginning on April 1, 2022, and continuing thereafter, the maximum volume of distilled spirits that such distiller may sell from each specific licensed premises permitted to make such retail sales under this subsection during any calendar quarter shall be limited as follows:
 - a.

From a licensed premises at which such distiller reports on-site production volume, the maximum volume shall be the on-site production volume at such licensed premises during such calendar quarter; and

- b. From a licensed premises that meets all of the qualifications described in subparagraphs a. through d. of paragraph (7) of this subsection, the maximum volume shall be the difference between:
 - (i) The total aggregate on-site production volume of such distiller in this state among all of such distiller's licensed premises during such calendar quarter; and
 - (ii) The total aggregate retail sales made by such distiller under this subsection at all other licensed premises at which such distiller makes retail sales under this subsection during such calendar quarter.
- (b) Each distiller shall file a report with the City of Kennesaw and the Georgia Department of Revenue every calendar quarter documenting all retail sales made under subsection (a) of this Code section and the on-site production volume of such distiller at each licensed premises in such manner and on such forms as designated by the Georgia Department of Revenue.
- (c) Reserved.
- (d) Nothing in this Code section shall prohibit a distiller from transferring any liquid, regardless of whether such liquid would be deemed to be a finished product of distilled spirits or was distilled by such distiller, to or from any of such distiller's licensed premises or from selling such transferred liquid to individuals present at such distiller's licensed premises, subject to the terms and limitations of subsection (a) of this Code section.
- (e) A distiller may sell distilled spirits pursuant to subsection (a) of this Code section on all days and at all times that sales of distilled spirits by retailers and retail consumption dealers are lawful within the City of Kennesaw, including, but not limited to, Sundays.
- (f) A distiller shall not sell any distilled spirits for consumption off the premises pursuant to subsection (a) of this Code section at a price less than the price at which a person licensed to sell distilled spirits by the package is permitted to sell distilled spirits pursuant to subsection (b) of O.C.G.A. § 3-4-26.
- (g) Any distiller engaging in sales of distilled spirits pursuant to subsection (a) of this Code section shall remit all state and local sales, use, and excise taxes to the proper tax collecting authority.
- (h) The Commissioner of the Georgia Department of Revenue shall promulgate and enforce such rules and regulations as he or she may deem reasonable and necessary to effectuate the provisions of state law governing the sales of distilled spirits, and any licensee under this section must comply fully with any such rule or regulation and with any and all state laws, including but not limited to those found in O.C.G.A. § 3-4-24, governing such sales.
- (i)

Upon a violation by a distiller of any provision of state law or any rule or regulation promulgated thereunder governing the sale of distilled spirits, the Commissioner of the Georgia Department of Revenue shall have the power to place conditions or limitations on such distiller's State license and to modify or amend such conditions or limitations. In addition, the City of Kennesaw may place on probation with or without conditions, suspend with or without conditions, or revoke such distiller's license issued by the City of Kennesaw for any such violation and/or any violation of the Kennesaw Code of Ordinances governing such sales.

(Ord. No. 2017-10, § 4, 8-21-17; Ord. No. 2021-14, § 4, 11-15-21)

State Law reference— Sale of distilled spirits, O.C.G.A. § 3-4-24.2.

Sec. 6-74. - Regulations for manufacturers of malt beverages.

- (a) The license to manufacture malt beverages in the city shall include the right to sell malt beverages to individuals on the brewer's licensed premises for personal use and not for resale, subject to the following terms and conditions:
 - (1) The brewer may only make sales of malt beverages to an individual while the individual is physically on the brewer's licensed premises where the brewer produces malt beverages;
 - (2) The brewer may make sales of malt beverages the brewer produces at the brewer's licensed premises where the individual is purchasing the malt beverages;
 - (3) As long as the brewer and all of the brewer's licensed premises are under common ownership, the brewer may make sales of malt beverages the brewer produces at any licensed premises of the brewer and subsequently transfers in compliance with the limitations and reporting obligations of subsection (b) of this Code section to the brewer's licensed premises for sale where the individual is purchasing the malt beverages;
 - (4) The brewer may only make sales of malt beverages for which the brewer is the sole owner of the brand and brand label;
 - (5) Sales for consumption on the premises are not subject to a daily maximum amount;
 - (6) Sales for consumption off the premises shall not exceed a maximum of 288 ounces of malt beverages per individual per day; and
 - (7) The maximum amount of malt beverages the brewer may sell pursuant to subsection (a) of this Code section in each calendar year shall be 6,000 barrels in the aggregate among all brewer's licensed premises making such sales.
- (b) Nothing in this Code section shall be interpreted to prohibit a brewer from transferring any liquid, regardless of whether such liquid would be deemed to be malt beverages or not, to or from any of the brewer's licensed premises; provided, however, with respect to any malt beverages a brewer produces at one of the brewer's licensed premises and transfers to be sold to individuals pursuant to subsection (a) of this Code section at another of the brewer's licensed premises, the

maximum number of barrels of malt beverages permitted to be transferred from one licensed premises of the brewer to another licensed premises of the brewer shall not exceed the number of barrels of malt beverages the brewer produces under brands and brand labels for which the brewer is the sole owner at the licensed premises receiving the transferred malt beverages and the brewer shall file a report with the Georgia Department of Revenue and with the City of Kennesaw every calendar quarter documenting all such transfers in such form as the department shall require.

- (c) A brewer may sell malt beverages pursuant to subsection (a) of this Code section on all days and at all times that sales of malt beverages by retailers are lawful within the City of Kennesaw, including, but not limited to, Sundays.
- (d) Any brewer engaging in sales of malt beverages pursuant to subsection (a) of this Code section shall remit all state and local sales, use, and excise taxes to the proper tax collecting authority.
- (e) The Commissioner of the Georgia Department of Revenue shall promulgate and enforce such rules and regulations as he or she may deem reasonable and necessary to effectuate the provisions of state law governing the sales of malt beverages, and any licensee under this section must comply fully with any such rule or regulation and with any and all state laws, including but not limited to those found in O.C.G.A. § 3-4-24, governing such sales.
- (f) Upon a violation by a brewer of malt beverages of any provision of state law or any rule or regulation promulgated thereunder governing the sale of malt beverages, the Commissioner of the Georgia Department of Revenue shall have the power to place conditions or limitations on such brewer's State license and to modify or amend such conditions or limitations. In addition, the City of Kennesaw may place on probation with or without conditions, suspend with or without conditions, or revoke such brewer's license issued by the City of Kennesaw for any such violation and/or any violation of the Kennesaw Code of Ordinances governing such sales.

(Ord. No. 2017-10, § 5, 8-21-17; Ord. No. 2021-14, § 5, 11-15-21)

State Law reference— Sale of malt beverages, O.C.G.A. § 3-4-24.1.

Secs. 6-75—6-86. - Reserved.

ARTICLE III. - PROHIBITIONS AND RESTRICTIONS

Sec. 6-87. - Employment and entry upon the premises.

- (a) As used in this Code section, the term "bouncer" means an individual primarily performing duties related to verifying age for admittance, security, maintaining order, or safety, or a combination thereof.

- (b) No person shall allow or require an individual under the age of 21 to serve as a bouncer on a premises or in an establishment where alcoholic beverages are dispensed, served, or sold pursuant to a license issued under this title.
- (c) No individual under the age of 21 shall enter or be allowed to enter a bar unless he or she is accompanied by his or her parent, guardian, or spouse who is 21 years of age or older. This subsection shall not apply to an individual while he or she is attending a live musical concert or live presentation of the performing arts for which he or she has paid an admission charge.
- (d) No licensee shall allow or require a minor to dispense, serve, sell or take orders for any alcoholic beverages. It shall be unlawful for any individual under the age of 21 to dispense, serve, sell or take orders for any alcoholic beverages in a bar.
- (e) It is the responsibility of the licensee and designee to ensure that the employees and independent contractors, whether compensated or non-compensated, required under this Code section obtain and possess the required work permit issued by the Kennesaw Police Department prior to working in the licensed establishment. Failure of an employee and/or independent contractor to possess a work permit while selling or serving alcoholic beverages, as required by this section, shall be unlawful and will subject the employee and/or independent contract and licensee to prosecution as provided in this chapter and shall be grounds for placing on probation, suspending, or revoking the license.

(Ord. No. 2016-18, § 3, 8-15-16; Ord. No. 2021-14, § 6, 11-15-21)

Editor's note— Ord. No. 2016-18, § 3, adopted Aug. 15, 2016, amended § 6-87 in its entirety to read as herein set out. Former § 6-87 pertained to employment of minors and derived from Ord. No. 2008-18, § 2, adopted May 19, 2008.

Sec. 6-88. - Serving customers.

Alcoholic beverages by the drink permitted to be sold under this chapter shall only be served by employees of the licensee.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2010-13, § 5, 6-21-10)

State Law reference— Employee solicitation of patrons for drinks on premises; O.C.G.A. § 3-3-42.

Sec. 6-89. - Sale to underage persons, incompetents, intoxicated persons.

No licensee under this chapter and no employee of such a licensee under this chapter shall furnish, sell or knowingly allow the possession of any alcoholic beverages, whether by the package or by the drink to:

- (1) Any person under the age at which such beverages may be legally purchased in the state; or
- (2) Any person in an intoxicated condition; or

- (3) Any person known to such licensee or his or her employee to be an habitual drunkard; or
- (4) Any person known to such licensee or his or her employees to be of intemperate habits or of unsound mind.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-10, 8-6-12)

State Law reference— Offenses involving alcohol and underage persons, O.C.G.A. § 3-3-23.

Sec. 6-90. - Notice; allowing underage person on licensed premises.

- (a) Licensees that own, operate or manage a nightclub, indoor entertainment hall, lounge or package store and/or their employees shall not permit underage persons on the licensed premises unless such person is (1) accompanied by a parent or legal guardian; or, (2) unless such person is an on-duty employee of the licensee and is at least 18 years of age. However, an indoor entertainment hall may allow persons who are at least 18 years of age to be on the premises without a parent or legal guardian on specially designated days, whether they are designated "special events," "concert nights," or other similar term, not to exceed two days per calendar week, and only one of which may be a day other than Friday and Saturday, under the following conditions:
 - (1) Every patron must be required to present valid identification and proof that the patron is at least 21 years age at the point of sale within the indoor entertainment hall each time such patron attempts to purchase alcoholic beverages while on the premises. In lieu of checking identification and proof of age at the point of sale within the indoor entertainment hall, the licensee or the licensee's employees may check such identification and proof of age at the entrance to the indoor entertainment hall, provided that any person who is 21 years of age or older who enters the premises be provided with a handstamp, nonremovable wrist band, or similar method of confirmation that the patron is legally entitled to purchase alcoholic beverages while on the premises. In such event, no licensee or employee of licensee may sell, serve, or provide any alcoholic beverage on the premises to any patron who does not present such handstamp, nonremovable wristband, or similar method of confirmation that the patron is 21 years of age or older each and every time the patron attempts to purchase an alcoholic beverage.
 - (2) On days the indoor entertainment hall allows underage patrons on the premises in accordance with this section, no patron may be sold, served, or provided more than one alcoholic beverage during any single transaction.
 - (3) A conspicuous notice must be posted at the entrance to the indoor entertainment hall and at each point of sale within the indoor entertainment hall stating that it is illegal under state and local law for persons under the age of 21 years of age to purchase or consume alcoholic beverages, that it is illegal for any person under the age of 21 years of age to misrepresent his or her age in any manner whatsoever, that it is illegal for anyone to purchase alcohol for or on

behalf of any other person under the age of 21 years of age, and that any person found in violation of any such law will be subject to arrest and criminal prosecution. "Conspicuous notice" as used in this chapter shall mean a sign on white background with red or black print with the printed message being 28 point type or larger.

(4) On days the indoor entertainment hall allows underage patrons on the premises in accordance with this section, licensee must employ or otherwise provide at least two uniformed, off-duty Kennesaw police officers to patrol the exterior of the indoor entertainment hall, including the parking lot. Such officers shall not enter the indoor entertainment hall unless requested by licensee or licensee's employees or unless the officers otherwise have reason to believe that illegal activity has taken or is taking place within the indoor entertainment hall or that the health or safety of the patrons is immediately at risk.

(5) The indoor entertainment hall must require that each person entering the premises provide valid identification and proof at the entrance to the premises that the person entering the premises is at least 18 years of age. No person under the age of 18 years of age may be admitted to the indoor entertainment hall without a parent or legal guardian.

(b) Each licensee shall post a conspicuous notice at the entrance to the indoor entertainment hall and at each point of sale within the indoor entertainment which shall contain the provisions of the laws of this state which deal with the unlawful sale of alcoholic beverages to underage persons and the penalties for violating such laws.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2010-13, § 6, 6-21-10; Ord. No. 2012-10, 8-6-12; Ord. No. 2017-10, § 6, 8-21-17)

State Law reference— O.C.G.A. § 3-3-24.2.

Sec. 6-91. - Purchase, consumption or possession by or for underage persons.

(a) It shall be unlawful for any underage person to purchase, drink or possess any alcoholic beverages.

(b) It shall be unlawful for any person to keep or maintain a place where underage persons knowingly are allowed and permitted to come and purchase, drink or possess any alcoholic beverages.

(c) It shall be unlawful for any person to buy any alcoholic beverage and furnish it to an underage person for consumption.

(d) The prohibitions contained in subsections (a), (b) and (c) of section 6-91 of this chapter shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:

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

(2)

At a religious ceremony; or

(3) When the parent or guardian of the person under 21 years of age gives the alcoholic beverages to the person and when possession is in the home of the parent or guardian and such parent or guardian is present.

(e) It shall be the responsibility of the licensee to obtain and examine proper identification of patrons to be certain that such patrons are of legal age pursuant to the standard as set forth in O.C.G.A. 3-3-23(h), or as may be amended from time to time. The term "proper identification" means any document issued by a governmental agency containing the description of the person, the 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 state issued identification card for persons without a driver's license. "Proper identification" shall not include birth certificate, traffic citation and complaint form, or student (college/university) identification card.

(Ord. No. 2008-18, § 2, 5-19-08)

State Law reference— Offenses involving alcohol and underage persons. O.C.G.A. § 3-3-23.

Sec. 6-92. - Same—Misrepresentation of age.

It shall be unlawful for any underage person to falsely misrepresent his/her age in any manner whatsoever.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-93. - Hours of operation.

(a) *Alcoholic beverages by the package.* Licensees for the sale of distilled spirits by the package shall not engage in the sale of such beverages except between the hours of 8:00 a.m. and 11:55 p.m., Monday through Saturday. Licensees for the sale of distilled spirits by the package shall not engage in the sale of such beverages except between the hours of 11:30 a.m. and 11:30 p.m., Sunday; however, to engage in such sales the licensee must hold a license allowing it to sell such distilled spirits on Sundays. Licensees for the sale of malt beverages, and/or wine, and/or fortified wine, and/or hard cider by the package shall not engage in the sale of malt beverages, and/or wine, and/or fortified wine, and/or hard cider by the package except between the hours of 8:00 a.m. and 2:55 a.m. Monday through Friday, and 8:00 a.m. and 11:55 p.m. Saturday. Licensees for the sale of malt beverages, and/or wine, and/or fortified wine, and/or hard cider by the package shall not engage in the sale of malt beverages, and/or wine, and/or fortified wine, and/or hard cider by the package except between the hours of 11:30 a.m. and 11:30 p.m., Sunday; however, to engage in such sales the licensee must hold a license allowing it to sell such malt beverages, and/or wine, and/or fortified wine, and/or hard cider on Sundays.

- (b) *Alcoholic beverages by the drink.* Sale of any alcoholic beverages by the drink for on-premises consumption, including operation of a bottle house: Licensees shall not engage in the sale of any alcoholic beverages between the hours of 2:00 a.m. and 8:00 a.m. Monday through Saturday, and between the hours of 2:00 a.m. and 11:00 a.m. on Sunday. All alcoholic beverages will be consumed or removed no later than 30 minutes after legal sales have been terminated, provided that this subsection shall not apply to private clubs hereunder.
- (c) *Wholesalers.* The business hours of any wholesaler licensed under this chapter shall be sunup to sundown, exclusive on Sunday.
- (d) *Sundays.* A licensee for the sale of distilled spirits, malt beverages, and/or wine, and/or fortified wine, and/or hard cider by the package at retail shall be allowed to sell such alcoholic beverages between the hours of 11:30 a.m. and 11:30 p.m. on Sundays only if that licensee holds a permit from the city authorizing that licensee to engage in Sunday sales of the type of alcoholic beverages being sold.
- (e) *Election days.* The sale of alcoholic beverages in the city shall be permitted on election days as provided by O.C.G.A. § 3-3-20, as amended.
- (f) Nothing contained in this section shall prevent any restaurant that is licensed to sell alcoholic beverages for consumption on the premises to permit a patron to remove one unsealed bottle of wine and/or bottle of fortified wine per patron for consumption off premises, provided that the patron has purchased a meal and consumed a portion of the bottle of wine on the restaurant's premises. The securing, resealing and transporting of said bottle of wine and/or bottle of fortified wine shall be in accordance with procedures outlined in O.C.G.A. § 3-6-4.
- (g) *Distiller.* A distiller may sell distilled spirits on all days and at all times that sales of distilled spirits by retailers and retail consumption dealers are lawful within the city, including, but not limited to Sundays.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2008-24, 6-16-08; Ord. No. 2008-25, 7-7-08; Ord. No. 2008-28, § 1, 8-4-08; Ord. No. 2010-13, § 7, 6-21-10; Ord. No. 2011-30, 12-19-11; Ord. No. 2012-11, 9-4-12; Ord. No. 2017-10, § 7, 8-21-17; Ord. No. 2018-28, 12-3-18; Ord. No. 2021-14, § 7, 11-15-21)

State Law reference— Sale of alcoholic beverages on election days, O.C.G.A. § 3-3-20.

Sec. 6-94. - Requirements of wholesalers generally.

All wholesalers shall be licensed under the provisions of this chapter and shall comply with this chapter before they can sell or deliver any distilled spirits to any establishment in the city. Deliveries and sales shall only be made to retailers properly licensed under this chapter for the operation of establishments in the city. Deliveries shall be made in a conveyance owned and operated by a wholesaler licensed as set out in this section and shall at all times when deliveries are being made be subject to inspection by any duly authorized authorities of the city.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-95. - Retailers to purchase from properly licensed wholesalers; exception.

Retail dealers in distilled spirits licensed under the applicable provisions of this chapter shall not buy nor accept deliveries of distilled spirits from wholesalers or other persons offering distilled spirits for sale except from wholesalers duly licensed under this chapter. Such retail dealers shall only accept deliveries of distilled spirits directly to the premises for which their license and permit was issued, and by no means other than a conveyance owned and operated by a wholesaler licensed as required by this chapter; except that, on written request to the business license division manager of the city and upon the granting of permission by the city in writing, deliveries may in special instances be made otherwise upon terms and conditions as prescribed by the mayor and city council as to each delivery.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-96. - Reserved.

Editor's note— Ord. No. 2021-14, § 8, adopted November 15, 2021, repealed § 6-96, which pertained to sale or delivery to unlicensed premises or unlicensed caterers and derived from Ord. No. 2008-18, adopted May 19, 2008.

Sec. 6-97. - Discrimination or interference by wholesaler.

No wholesaler may discriminate between retail dealers as to quantity, selections, and brands sold to the retail dealer, nor use any business technique so as to control the retail dealer's business and pricing policy, or in any way interfere with the free enterprise operation of the retail dealer.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-98. - Storage—Regulation generally.

All licensed retailers shall store all distilled spirits possessions on the premises for which the license was issued, and at no other place. All distilled spirits stock shall be available for inspection by authorized city officials. Any brand or type of distilled spirits found in any retailer's stock that is handled by a wholesaler who is not licensed to make sales and deliveries in the city shall be subject to immediate confiscation.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-99. - Breaking of packages; consumption on premises; possession of alcoholic beverages on unlicensed premises; spirituous or alcoholic liquors.

- (a) No retail dealer shall knowingly and intentionally allow or permit the breaking or opening of any package or packages containing alcoholic beverages on the premises where sold or allow or permit the drinking of the contents of such package or packages on the premises where sold. This section shall not apply with respect to sales pursuant to a license for consumption on the premises.
- (b) A restaurant, eatery, cafe, diner or other eating establishment not licensed under this chapter for on-premise consumption shall not knowingly and intentionally allow or permit the breaking or opening of any package or packages containing alcoholic beverages on the unlicensed premises or permit the drinking of the contents of such package or packages on the unlicensed premises.
- (c) It shall be unlawful for any licensee who is authorized to sell malt beverages, or hard cider, or wine, to sell, store or possess spirituous or alcoholic liquors without an appropriate license therefor.
- (d) Upon the suspension, revocation, denial of renewal or denial of transfer of any alcoholic beverage license under this chapter, the licensee shall remove from the licensed premises all alcoholic beverages within 48 hours of the effective date of such suspension, revocation or denial.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-11, 9-4-12)

State Law reference— O.C.G.A. § 3-3-26.

Sec. 6-100. - Clear view of entrance and interior of licensed premises; lighting; private clubs.

- (a) No licensee for the sale of alcoholic beverages by the package shall operate under the license unless the front entrance to the licensed premises is clearly visible from the public street; provided, however, this restriction shall not apply where the licensee is a hotel, motel, private club or is located in a shopping center or multiple-story business building. Clearly visible shall mean that not less than 60 percent of the front area shall be glass. Front area shall mean the width of the premises from the ceiling to the floor.
- (b) No screen, blind, curtain, partition, article or thing which shall prevent a clear view into the interior shall be permitted in the window or upon the doors of any retail store for the sale of alcoholic beverages by the package, and no booth, screen, partition or other obstruction shall be permitted within the interior of any such store. Each such store shall be so lighted that the interior of the store is visible day and night.
- (c) Private clubs which have been granted licenses under this chapter to sell distilled spirits at retail by the package shall not have an outside or street entrance for such retail outlet to sell to the general public, nor shall any such establishment make any sales to any member of the general public who is not a member of the private club.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-101. - Sanitary and fire protection regulations; disturbances; inspections.

- (a) All premises licensed under this chapter shall be kept clean and in proper sanitary condition and in full compliance with the provisions and regulations governing the condition of premises used for the storage and sale of food for human consumption.
- (b) It shall be unlawful for a licensee to permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practices on any licensed premises.
- (c) The fire inspector shall inspect premises licensed under this chapter to determine compliance with subsections (a) and (d) of this section and report its findings to the mayor and city council.
- (d) All premises licensed under this chapter shall conform at all times with all fire regulations of the city, county, and state.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-102. - Misrepresentation of alcoholic beverages.

It shall be unlawful for licensees or their employees to add to the contents of a bottle or to refill empty bottles or in any other manner to misrepresent the quantity, quality or brand name of any alcoholic beverage. This section shall not preclude the sale and/or refilling of any growler so long as such sale or refilling complies with section 6-111 of this Code.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2012-11, 9-4-12)

Sec. 6-103. - Prices to be conspicuously displayed.

Each retail licensee for sale in the package shall have conspicuously displayed within the interior of the licensed premises not less than four copies of a printed price list of the alcoholic beverages offered for sale; provided, however, a licensee, in lieu of having four copies of a printed list, may have the price placed on the bottles or on the bottom of the shelf where alcoholic beverages are exhibited for sale.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-104. - Exterior advertisements.

No sign of any kind, painted or electric, advertising any brand or price of distilled spirits shall be permitted on the exterior, or in the window, of the licensed premises, except one sign located in the interior which shall be not more than 12 inches by 36 inches, and may be lighted or unlighted.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-105. - Coin-operated devices, similar machines on licensed premises.

No retail dealer in distilled spirits by the package shall permit on his premises any slot machines, other food or cigarette vending machines, or any mechanical music boxes or pinball machines of any kind or character or any machines operated for amusement purposes.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-106. - Possession or consumption on public property.

It shall be unlawful for any person to: possess or transport alcoholic beverages for the purpose of consumption on public property; consume alcoholic beverages on public property; or, sell alcoholic beverages on any public property, with the following exceptions: at an establishment licensed as an eating or drinking establishment that holds a current encroachment permit pursuant to section 22-481, at a closed function permitted pursuant to section 6-71 or at an event approved pursuant to section 6-72 of the Code of Ordinances, Kennesaw, Georgia.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2009-08, § 1, 10-5-09; Ord. No. 2011-09, 8-15-11; Ord. No. 2016-22, 9-19-16)

Sec. 6-107. - Public intoxication.

It shall be unlawful for any person to be on public property within the city limits while intoxicated.

(Ord. No. 2008-18, § 2, 5-19-08)

Sec. 6-108. - Reserved.

Sec. 6-109. - Pricing of alcoholic beverages.

- (a) This section shall be construed to cover, include and apply to every type of alcoholic beverage licensed to be sold in the City of Kennesaw, including wine, fortified wine, hard cider, malt beverages and spirituous liquors.
- (b) No licensee or holder of any license to sell alcoholic beverages for consumption on the premises or in any part thereof, or employee or agent of a licensee, shall:
 - (1) Offer or deliver any free alcoholic beverage to the general public. This subsection shall not apply to tasting rooms of farm wineries where wine is offered in a quantity to only taste the product. This subsection shall also not apply to those persons or entities who are engaged in the business of refilling growlers who are allowed to provide samples to taste the product as set forth in section 6-111 of this chapter.

(2)

Deliver more than two alcoholic beverages to one person at one time, or allow any patron to possess more than two alcoholic beverages at one time.

- (3) Sell, offer to sell, or deliver to any person or group of persons two or more or an unlimited number of alcoholic beverages during any set period of time at a fixed price, except at private functions not open to the public.
 - (4) Sell, offer to sell, or deliver alcoholic beverages, by the pitcher or carafe, except to two or more persons at any one time.
 - (5) Encourage or permit on the licensed premises any game, event, competition, contest, or promotion that involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.
 - (6) Sell two or more alcoholic beverages for a price per beverage that is less than that charged for the one such alcoholic beverage.
 - (7) Require or encourage the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased.
 - (8) Knowingly allow an alcoholic beverage purchased on the premises to be removed from the premises without having been consumed. "Premises," for the purchase of this section, shall be construed to mean the entire area under the supervision, management or control of the licensee, excluding areas for parking of motor vehicles; and, in the case of licensees whose licensed location is located on a portion of the premises of a club, organization, establishment or entity offering outdoor recreation (for instance, golf or tennis), the word "premises" shall extend to cover all areas operated as a part of the club or entity excluding areas for parking of motor vehicles. This section shall not apply to establishments located in entertainment districts within the City of Kennesaw. This section shall also not prohibit the delivery of alcoholic beverages to customers by licensed establishments for off-premises consumption to the extent allowed by Georgia law.
- (c) There shall be no advertisement or promotion in any way, whether within or without the licensed premises, of any of the practices prohibited under this section.
- (d) No provision of this section shall be construed to prohibit licensees from offering free food or entertainment at any time, or to prohibit licensees from including an alcoholic beverage as a part of a meal package, or to prohibit the sale or delivery of wine or fortified wine by bottle or carafe when sold with meals to more than one person, or to prohibit any hotel or motel from offering room services to registered guests, or to prohibit the sale of more than two drinks at one time which are to be consumed by the purchaser out-of-doors on the premises of the licensee, as described in this section, in connection with the purchaser's participation as a player of games of golf or tennis; otherwise, no food and alcoholic beverage package may be offered by any licensee;

however, nothing contained in this section shall be construed to allow a licensee to circumvent the intent of this section by offering meals which include an alcoholic beverage as a device or scheme to promote drink sales at a price per beverage less than the daily listed price.

(Ord. No. 2008-18, § 2, 5-19-08; Ord. No. 2008-25, § 1, 7-7-08; Ord. No. 2010-13, § 8, 6-21-10; Ord. No. 2012-11, 9-4-12; Ord. No. 2021-14, § 9, 11-15-21)

Sec. 6-110. - Additional activities prohibited; rationale and findings; exception.

(a) *Rationale and findings.*

Whereas, Article III, Section VI, Paragraph VII of the Constitution of the State of Georgia, delegates authority to Counties and municipalities "for the purpose of regulating, restricting, or prohibiting the exhibition of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages;" and,

Whereas, the United States Court of Appeals for the Eleventh Circuit has upheld a municipal ordinance prohibiting the serving or consumption of alcoholic beverages in adult entertainment establishments; and,

Whereas, the Supreme Court of Georgia has upheld a municipal ordinance prohibiting the serving or consumption of alcoholic beverages in adult entertainment establishments; and,

Whereas, among the undesirable community conditions identified with live nude entertainment and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order; increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight; *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *5634 East Hillsborough Ave., Inc. v. Hillsborough County*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4279670 (11th Cir. Sept. 18, 2008) (*per curiam*); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and,

Whereas, the Supreme Court of Georgia, in *Chambers d/b/a Neon Cowboy v. Peach County, Georgia*, 266 Ga. 318, 467 S.E.2d 519 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses, and further held that a governing authority seeking to regulate adult entertainment establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control. The Georgia Supreme Court further held in the same opinion that in passing its regulations, a local government may rely on the experience of other counties and municipalities to demonstrate such a relationship; and,

Whereas, the United States Supreme Court, in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), held that a local government may rely on the experience of other Cities in enacting legislation to regulate adult entertainment businesses; and,

Whereas, Federal and State appellate courts, have previously held that before enacting an ordinance to combat undesirable secondary effects of adult entertainment, a legislative body is required to consider specific evidence of the undesirable secondary effects of adult entertainment establishments that it reasonably believes relevant to the interests it seeks to address by passing the ordinance; and,

Whereas, based on the experiences of other municipalities and counties including, but not limited to, Fulton County, Georgia; Adams County, Colorado; New York City, New York; Indianapolis, Indiana; Dallas, Texas; Sandy Springs, Georgia; Oklahoma City, Oklahoma; City of St. Mary's, Georgia; Hamilton County, Tennessee; Amarillo, Texas; Rome, Georgia; Gwinnett County, Georgia; Austin, Texas; Phoenix, Arizona; Manatee County, Florida; City of Garden Grove, California; Fort Worth, Texas; Houston, Texas; St. Cloud, Minnesota; Whittier, California; and the City of Los Angeles, California, which are found to be relevant to the problems faced by the City of Kennesaw, the Mayor and City Council of the City of Kennesaw note the documented negative economic, physical, and social impact adult entertainment businesses have on the community; and,

Whereas, based upon the experience of other urban counties and municipalities, which experiences the Mayor and City Council of the City of Kennesaw find are relevant to the problems faced by the City of Kennesaw, and which do not vary greatly among generally comparable communities within this country, the Mayor and City Council of the City of Kennesaw find that public nudity, under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in adult entertainment establishments offering adult entertainment, begets criminal behavior and tends to create undesirable community conditions. *Flanigan's Enterprises, Inc. of Georgia et al. v. Fulton County, Georgia*, 596 F.3d 1265, 2010 WL 520542 (11th Cir. 2010); and,

Whereas, the Mayor and City Council of the City of Kennesaw find and declare that nudity and sexual conduct and depiction thereof, coupled with alcohol in public places, encourages undesirable behavior and is not in the interest of public health, safety, and welfare; and,

Whereas, the Mayor and City Council of the City of Kennesaw have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon establishments which sell spirituous or vinous liquors or malt or brewed beverages; and,

Whereas, the ordinance furthers important governmental interests of reducing crime and protecting property values which are unrelated to the suppression of speech; and,

Whereas, it is the intent of the Mayor and City Council of the City of Kennesaw to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of the serving and consumption of alcoholic beverages at adult entertainment facilities; and,

Whereas, it is not the intent of the Mayor and City Council of the City of Kennesaw, in enacting this article to deny to any person the right to speech or expression protected by the United States or Georgia Constitutions, nor it is the intent to deny or restrict the rights of any adult to obtain or view any sexually oriented performance or materials protected by the United States or Georgia Constitutions, but to adopt a content neutral ordinance to combat the undesirable secondary effects of adult entertainment where alcoholic beverages are served or consumed; and,

Whereas, this Section is enacted to further the health, safety, and welfare of the citizens of the City of Kennesaw;

Now, Therefore, this Section is hereby enacted to further such health, safety, and welfare of the citizens of the City of Kennesaw.

(b) Activities prohibited; minimum clothing requirements; exception.

- (1) No person shall suffer or permit any person to engage in live conduct exposing to public view the person's genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks or any portion of the female breast below the top of the areola on the licensed premises.
- (2) It shall be unlawful for any employee of any licensee to consume alcoholic beverages on the premises of the licensee during such employees working hours.
- (3) No drugs or illegal or controlled substances of any kind shall be allowed, permitted, used, possessed or sold upon the premises of any licensee, and no gambling shall be allowed or permitted therein.
- (4) No licensee shall allow any person to engage in specified sexual activities on the licensed premises.
- (5) No licensee shall use any person, in any capacity, in the sale or service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or of any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva, and or genitals.
- (6) No licensee shall allow the holding, promotion, or sponsoring of any contest, promotion, special night, event, or any other activity where patrons of the licensed establishment are allowed to engage in any of the conduct described in this section.
- (7)

Exception. Nothing contained in subsection (b) of this section shall apply to the premises of any theatre, concert hall, art center, museum, or similar establishment primarily devoted to the arts or theatrical performances, where the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

(Ord. No. 2010-13, § 9, 6-21-10)

Sec. 6-111. - Sale and refilling of growlers.

- (a) The sale and refilling of growlers in compliance with this chapter is authorized for growler shops licensed pursuant to section 6-52(h) of this Code.
- (b) The filling of growlers by means of a tapped keg shall not constitute the breaking of a package as contemplated by O.C.G.A. § 3-3-26 or any provision or section of this Code.
- (c) Growlers may only be filled from kegs or containers procured by the licensee from a duly licensed wholesaler.
- (d) Growlers may only be filled with a malt beverage, craft beer, or hard cider.
- (e) Only growlers that are properly sanitized may be filled and made available for retail sale. It shall be the responsibility of the entity filling the growler to sanitize such growler prior to filling it.
- (f) Each growler must be securely sealed and removed from the premises in its original sealed condition. Each growler shall bear a twist-type closure, cork, stopper, or plug. At the time of the sale and/or refilling, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container or bottle and extend over the top of the twist-type closure, cork, stopper, or plug forming a seal that must be broken upon opening of the container or bottle. The adhesive band, strip, or sleeve shall bear the name and address of the business filling the growler. The containers or bottles shall be identified as a malt beverage or craft beer, contain the name of the malt beverage or craft beer, and bear the name, address and telephone number of the business selling the malt beverage or craft beer.
- (g) Each growler filled with a malt beverage or craft beer must contain the following warning label:
"GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

It shall be the responsibility of the entity filling the growler to assure each growler has, on its exterior, a warning label containing the language set forth in this subsection.

- (h) Consumption of the contents of any growler on the premises where it was filled is strictly prohibited. However, the licensee may provide samples of any malt beverages or craft beer on tap and wine. Each such sample shall not exceed two fluid ounces. The licensee shall not serve

more than three samples to any individual within a 24-hour period. In addition, the licensee shall be permitted to sell flights of malt beverages, craft beer, wine and/or hard cider for consumption on the premises. A flight may consist of no more than four four-ounce glasses. The licensee may sell no more than two flights per person within any 24-hour period. Flights and samples must be consumed only in a designated area on or within the licensed premises. The licensee shall not be required to hold a separate license for sales of alcohol by the drink in order to serve or sell samples of flights of malt beverages, craft beer, wine and/or hard cider. However, the licensee must apply for and obtain a package/pouring license for a fee to be established from time to time by the city in section 6-52 of this Code in order to sell flights for consumption on the premises.

- (i) Sales of growlers shall be limited to the legal hours during which the licensee may sell such alcoholic beverages and must be removed from the premises before the applicable closing time.
- (j) Any person filling a growler with a malt beverage or craft beer, or handling a growler after filled the growler is filled with either a malt beverage or craft beer must have a server license issued by the city in conformance with the provisions of chapter 6, alcoholic beverages, of this Code.
- (k) The refilling of growlers shall not be a violation of section 6-102 of this Code.

(Ord. No. 2012-11, 9-4-12; Ord. No. 2016-10, 4-4-16; Ord. No. 2016-33, 11-17-16)

Sec. 6-112. - Liability of licensee for acts or omissions of employees.

Because employees of licensee are able to sell alcoholic beverages only as a result of the city issuing a license to the licensee, the licensee shall be liable for all acts or omissions of those employees that amount to a violation of this chapter.

(Ord. No. 2012-10, 8-6-12)

Sec. 6-113. - Reporting of disciplinary actions.

- (a) Pursuant to O.C.G.A. §3-3-2.1 and as amended, the finance director of the city shall be required to provide notification to the Georgia Department of Revenue within 45 days of any officer, department, agency, or instrumentality of the municipality taking disciplinary action against any person issued a license to operate any premises at which 75 percent or more total gross annual revenue is derived from the sales of alcoholic beverages for consumption on the premises.
- (b) Within 45 days of any disciplinary action, the licensee shall notify the Georgia Department of Revenue of the details of such disciplinary action, including the date such action was taken, the nature of such action, and any other information required by the Georgia Department of Revenue, using a format to be determined by the Georgia Department of Revenue.
- (c) The notification required under paragraph (a) and (b) of this code section shall be in the format for the reporting of disciplinary actions set by the Georgia Department of Revenue.

- (d) For purposes of this code section "disciplinary action" shall have the same meaning as provided for in O.C.G.A. §3-3-2.1(a)(1) and as amended, which includes any citation or arrest arising out of the violation of any law, rule, regulation, resolution, or ordinance of a governmental entity relating to the manufacture, distribution, sale, or possession of alcoholic beverages against a licensee, any employee of a licensee, or any person holding a financial interest in the license of a licensee on the premises or place of business of any licensee.

(Ord. No. 2016-18, 8-15-16)

Sec. 6-114. - Wine specialty shops.

Wine Specialty Shop will operate under the following conditions:

- (1) No less than 75 percent of the gross revenue of the business shall be derived from the package sale of table wine, fortified wines, port, sherry and/or wine accessories or other merchandise allowed to be sold in the business zoning district. Consumption on the premises sales must be 25 percent or less of the business' gross revenue; free samples distributed under this section shall not be included in the calculation of consumption on the premises sales.
- (2) It shall be unlawful for a wine specialty shop to sell or have on the premises spirituous liquors or packaged malt beverages.
- (3) A wine specialty shop shall be allowed to sell growlers containing craft draft beer, as long as they follow provisions set forth in section 6-111 of this chapter.
- (4) Shall be allowed to serve craft draft beers by the glass for consumption on the premises only during the same hours as are permitted in subsection 6-93 under this chapter for the sale of "malt beverages and/or wine, and/or fortified wine, and/or hard cider by the package." Packaged sales of craft draft beers other than craft draft beer growlers is prohibited. Malt beverages fees shall apply for consumption on the premises of craft draft beers.
- (5) Only the licensee or an employee shall dispense wine/craft/draft beers from a tap or bottle. Free samples of wine or craft draft beers shall not exceed two ounces nor shall any one individual be offered more than three samples within any 24-hour period.
- (6) Sampling or tasting of wine or craft draft beers is only permitted within the designated portion of the premises.
- (7) A wine specialty shop shall not be required to have more than one entrance to the licensed establishment by virtue of it holding a combination package/pouring license.
- (8) A retail establishment operating as a wine specialty shop shall provide the business license clerk's office, at the time of alcohol license renewal, a statement prepared by licensee's bookkeeper or accountant of the gross sales of the business for the preceding calendar year. The statement shall include the total gross sales for the establishment and document the

percentage of sales in dollars attributed to consumption on the premises as compared to package sales and other general merchandise sales. Copies of the state sales tax returns for the same period shall be attached to the statement. The statement must be properly notarized and certified to be true and correct by the licensee or his/her agent under penalty of law, and shall accompany the renewal license fee payment on or before December 31, of each year. The city reserves the right to require, for any reasons deemed necessary by the city, a certified audit for sales of wine.

(Ord. No. 2016-22, 9-19-16)

Sec. 6-115. - Brewpubs.

- (a) No individual shall be permitted to own or operate a brewpub without first obtaining any applicable federal and state licenses, and each brewpub licensee shall comply with all other applicable federal, state, and local laws, regulations, and license requirements;
- (b) A brewpub license authorizes the holder of such license to:
 - (1) Manufacture on the licensed premises not more than 10,000 barrels of malt beverages in a calendar year solely for retail sale;
 - (2) Operate an eating establishment that shall be the sole retail outlet for such malt beverages;
 - (3) Operate an eating establishment that may offer for sale for consumption on the premises any other alcoholic beverages produced by other manufacturers that are authorized for retail sale under this title, including wine, distilled spirits, and malt beverages, provided that such alcoholic beverages are purchased from a licensed wholesaler; and, provided, further, that in addition to draft beer manufactured on the premises, each brewpub licensee shall offer for sale commercially available canned or bottled malt beverages from licensed wholesalers;
 - (4) Notwithstanding any other provision of this paragraph, sell up to a maximum of 5,000 barrels annually of such malt beverages to licensed wholesale dealers. Under no circumstances shall such malt beverages be sold by a brewpub licensee to any person holding a retail consumption dealer's license or a retailer's license for the purpose of resale;
 - (5) Possession of a brewpub license shall not prevent the holder of such license from obtaining a retail consumption dealer's license or a retailer's license for the same premises;
- (c) A brewpub license holder shall not be prohibited from selling wine or malt beverages by the package for consumption off the premises;
- (d) A brewpub licensee shall:
 - (1) Pay all federal, state, and local license fees and excise taxes applicable to individuals licensed by this city and the state as manufacturers, retailers, and, where applicable, wholesalers under this title;
 - (2)

Measure malt beverages manufactured on the premises and otherwise comply with applicable rules and regulations respecting excise and enforcement tax determination of such malt beverages as required by this City, the state, and the federal government.

(Ord. No. 2016-33, 11-17-16; Ord. No. 2017-10, § 8, 8-21-17)

Sec. 6-116. - Tasting events at retail package stores.

Notwithstanding any other provision of this section, retail package liquor stores license within the City of Kennesaw shall be authorized to conduct up to 52 tasting events per calendar year, subject to the following terms and conditions:

- (1) A tasting event shall only take place on the licensed premises and only at times at which such alcoholic beverages may be lawfully sold on such licensed premises;
- (2) Only one tasting event per day may be held on the licensed premises and such tasting event shall not exceed four hours;
- (3) Only one type of alcoholic beverage may be served at a tasting event, either malt beverages, wine, or distilled spirits; provided, however, that more than one brand of such type of alcoholic beverage may be offered so long as not more than four packages are open at any one time;
- (4) If the tasting event is for malt beverages, a consumer shall not be served more than eight ounces of malt beverages during such tasting event. If the tasting event is for wine, a consumer shall not be served more than five ounces of wine during such tasting event. If the tasting event is for distilled spirits, a consumer shall not be served more than one and one-half ounces of distilled spirits during such tasting event;
- (5) Only alcoholic beverages that the licensee is licensed to sell on the licensed premises may be offered as part of a tasting event, and such alcoholic beverages shall be part of the licensee's inventory;
- (6) Only food that is lawful to sell on the licensed premises, under this section or under any rules or regulations of the Commissioner of the Georgia Department of Revenue, may be served as part of a tasting event. Such food shall be offered at no cost to the consumer;
- (7) Any operator or employee of the licensee may refuse to provide any brand, type, or quantity of alcoholic beverage to any consumer;
- (8) The licensee shall notify the City of Kennesaw prior to holding a tasting event;
- (9) Any broken package containing alcoholic beverages on the licensed premises that is not licensed for retail sales for consumption on the premises shall be kept locked in a secure room or cabinet by the operator of the licensed premises except when in use during a tasting event; and

- (10) Representatives and salespersons of manufacturers or wholesalers may attend a tasting event; provided, however, that such representatives and salespersons shall not host the tasting event, pour any alcoholic beverage, or provide anything of value to any consumer or to the licensee or an employee of a licensee.

State Law reference— Tasting events, O.C.G.A. § 3-15-1 and O.C.G.A. § 3-15-2.

Secs. 6-117—6-130. - Reserved.

ARTICLE IV. - SOCIAL HOSTING

Footnotes:

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Editor's note— Prior to the reenactment of Art. IV by Ord. No. 2012-14, said article was repealed by Ord. No. 2012-13, § 10, adopted June 21, 2012. The former Art. IV pertained to erotic entertainment/dance establishments and derived from Ord. No. 2008-18, § 2, adopted May 19, 2008. Ord. No. 2012-14, adopted Dec. 17, 2012, set out provisions intended for use as § 6-111 et seq. Inasmuch as there were already provisions designated as §§ 6-111 and 6-112, Ord. No. 2012-14 has been included herein as § 6-131 et seq. at the discretion of the editor.

Sec. 6-131. - Findings and intent.

The mayor and the city council finds and declares as follows:

- (a) In 2007, the U.S. Surgeon General issued a report entitled "The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking," which can be found at <http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf>. ("Surgeon General's Call to Action").
- (b) "Early alcohol consumption by some young people will result in an alcohol use disorder—that is, they will meet diagnostic criteria for either alcohol abuse or dependence." Surgeon General's Call to Action, at page 4.
- (c) "[A] higher percentage of youth in 8th, 10th, and 12th grades used alcohol in the month prior to being surveyed than used tobacco or marijuana, the illicit drug most commonly used by adolescents." Surgeon General's Call to Action, at page 5.
- (d) Various surveys have found that: approximately ten percent of children who are nine to ten years old have started drinking alcoholic beverages; nearly 33 percent of youth start drinking alcoholic beverages before the age of 13; more than ten percent of youth who are 12 to 13 years old and over 33 percent of youth who are 14 to 15 years old reported drinking a whole alcoholic beverage in the year before they were surveyed, and the peak years of alcohol initiation are when youth are in 7th and 8th grades. Surgeon General's Call to Action, at page 6.

- (e) While adolescents typically drink alcoholic beverages less often than adults, when they do drink alcoholic beverages, adolescents tend to drink more alcoholic beverages at each event than adults. Surgeon General's Call to Action, at pages 6—7.
- (f) Persons who are less than the age of 21 often possess or consume alcoholic beverages at social parties or gatherings held at or on private residences and other private property under control of a person who either has provided the alcoholic beverages or who knows or reasonably should know of such conduct, but fails to take steps to prevent it.
- (g) "Annually, about 5,000 people under age 21 die from alcohol-related injuries involving underage drinking." Surgeon General's Call to Action, at page 10.
- (h) Underage drinking "[p]lays a significant role in risky sexual behavior, including unwanted, unintended, and unprotected sexual activity, and sex with multiple partners. Such behavior increases the risk of unplanned pregnancy and for contracting sexually transmitted diseases (STDs), including infection with HIV, the virus that causes AIDS." Surgeon General's Call to Action, at page 10.
- (i) Underage drinking "[i]ncreases the risk of physical and sexual assault." Surgeon General's Call to Action, at page 10.
- (j) Underage drinking "[c]an cause a range of physical consequences, from hangovers to death from alcohol poisoning." Surgeon General's Call to Action, at page 11.
- (k) Underage drinking, "[c]an cause alterations in the structure and function of the developing brain, which continues to mature into the mid- to late twenties and may have consequences reaching far beyond adolescence." Surgeon General's Call to Action, at page 11.
- (l) Underage drinking, "[c]reates secondhand effects that can put others at risk. Loud and unruly behavior, property destruction, unintentional injuries, violence, and even death because of underage alcohol use afflict innocent parties. For instance, about 45 percent of people who die in car crashes involving a drinking driver under the age of 21 are people other than the driver." Surgeon General's Call to Action, at page 11.
- (m) Law enforcement agency responses to disturbances involving underage consumption of alcoholic beverages at parties or gatherings at or on private residences or other private property frequently require the use of extensive public resources. Further, when law enforcement personnel respond to such disturbances it limits their ability to respond to other service calls in the community, thereby placing the community at increased risk. Law enforcement is not currently reimbursed for their expenses when called to a party or gathering at or on a private residence or other private property.
- (n) The prohibitions found in this article are reasonable and expected to deter the possession and consumption of alcoholic beverages by persons under the age of 21 by holding responsible persons who encourage, are aware of, or should be aware of, the illegal conduct,

yet fail to take steps to prevent it. In addition, the revenue received by the city, after cost reimbursement to responding law enforcement agency, will be directed toward law enforcement strategies and prevention programs in the city.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-132. - Title.

This article shall be referred to as the "Kennesaw Social Hosting Ordinance."

(Ord. No. 2012-14, 12-17-12)

Sec. 6-133. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, or as set forth in section 6-1 of this Code, except where the context clearly indicates a different meaning.

Dwelling unit means, without limitations, any of the following:

- (1) Any single and multi-family residence including, but not limited to, any apartment, cabin, condominium, duplex, house, or log cabin, and the land on which it is located, whether owned, leased, rented, or occupied for no compensation by the occupant or occupants;
- (2) Any mobile home and the land upon which the mobile home is located, whether or not rent is paid for the mobile home, for the land upon which the mobile home is located, or for both;
- (3) Any recreational vehicle, whether located on privately-owned or publicly-owned property, and whether rent or not is paid for the recreational vehicle, and the land upon the recreational vehicle is located.

Gathering means an assembled group of people for the purpose of a social occasion or activity.

Legal guardian is a person who is lawfully vested with the power and charged with the duty of taking care of an underage person.

Other private property.

- (1) The term "other private property" includes the following locations:
 - a. A hotel or motel room;
 - b. An assembly hall or meeting room;
 - c. A common room of a dwelling unit used for a party (e.g., a recreation room of an apartment building or a common room of a condominium complex);
 - d. A site in a privately-owned campground;
 - e. A privately-owned vacant lot; or

- f. Privately-owned land or real estate of any type.
- (2) Such locations constitute "other private property" under all of the following conditions:
 - a. The location is occupied by one or more persons on a temporary or permanent basis;
 - b. The location is occupied as a dwelling, permanent residence, or temporary residence, for a party or for any other social function;
 - c. The location is owned, leased, rented, or used with or without compensation.

Parent means any person who is a natural parent, an adoptive parent, a foster parent, a step-parent, or who a person who stands *in loco parentis*.

Party means a gathering or event at which two or more persons assemble or gather for a social occasion or activity.

Person who has a right of possession means, with respect to a private residence or other private property, as follows:

- (1) Owner of the dwelling unit, private residence, or other private property;
- (2) The record owner of the title to the property as of the time of the party regardless of where that person currently resides;
- (3) Tenant or lessee of the dwelling unit, private residence, or other private property;
- (4) Landlord of another person who has a right of possession in the dwelling unit, private residence, or other private property;
- (5) The person or persons who are in charge of the dwelling unit, private residence, or other private property; or
- (6) Social host.

Private residence means the following:

- (1) A dwelling unit, whether occupied on a temporary basis, whether occupied as a dwelling or for a party or other social function, and whether owned, leased, rented, or used with or without compensation;
- (2) Any other item on the same land parcel as the dwelling unit, which includes, but is not limited to any of the following: an animal pen, an animal shed, a barn, a boat dock, a boat house, a cabana, an equipment shed, a free-standing office, a garage, a gazebo, a granary, a hot tub, a hunting cabin, a corn crib, a sauna, a stable, a studio, a swimming pool, a private office, a shed, a silo, a tent, a tool shed, a tree-house, a tractor, or a vehicle of any type or nature;
- (3) Other items or areas accompanying or on the same land parcel as the dwelling unit, whether improved or unimproved, such as a yard (whether fenced or unfenced), patio, outdoor grilling or eating area, open fields, jetty, pier, dock, or lake shore;
- (4)

Water bodies contiguous to or on the same land parcel as a dwelling unit, such as a basin, bayou, brook, creek, dam, lagoon, lake, marsh, pond, river, stream, or swamp.

Reasonable steps means steps that include, but are not limited to:

- (1) Controlling access to alcoholic beverages;
- (2) Controlling the quantity of alcoholic beverages;
- (3) Verifying the legal minimum drinking age of persons at the party or gathering by inspecting drivers licenses or other government-issued identification cards all of those persons in attendance; and
- (4) Supervising and monitoring the activities of underage persons at the party or gathering.

Social host means:

- (1) The person or persons who organize, supervise, officiate, conduct or control a party or gathering at or on or at a dwelling unit, a private residence, or other private property owned, leased, or otherwise controlled by that person or those persons;
- (2) The person or persons receiving money or any other type of consideration for granting access to a party or gathering at or on a dwelling unit, a private residence, or other private property owned, leased or otherwise controlled by that person.

Underage person means any person under the age of 21.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-134. - Prohibition.

- (a) It shall be a violation of this article for any person who has a right of possession of a dwelling unit, a private residence, or other private property to knowingly host, permit, or allow a party or gathering to take place or continue at or on such private residence or other private property if any underage person at the party or gathering possesses or consumes any alcoholic beverage and the person knows or reasonably should know, after taking all reasonable steps to prevent alcoholic beverage possession or consumption by the underage person, that the underage person is possessing or consuming any alcoholic beverage at the party or gathering.
- (b) It shall be a violation of this article for a parent or legal guardian to allow any underage person under the care of that parent or legal guardian to allow to attend a party or other social gathering if that parent or legal guardian knows or reasonably should know that the underage person will possess or consume any alcoholic beverage at that party or social event.
- (c) It is the duty of any person having a right of possession of a dwelling unit, a private residence, or other private property, who knowingly hosts, permits or allows a party or gathering at or on the dwelling unit, the private residence, or other private property, to take all reasonable steps to

prevent the possession or consumption of alcoholic beverages by any underage person at the party or gathering. A breach of this duty shall be a violation of this article.

(d) Any violation of O.C.G.A. § 3-3-23, as amended, shall also be a violation of this article.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-135. - Protected activities.

(a) Nothing in this article should be interpreted to prohibit legally protected practices held at or on a dwelling unit, a private residence, or other private property that includes the possession and/or consumption of alcohol by persons under the age of 21:

- (1) As part of religious practices on private property; or
- (2) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state and the consumption occurs on private property pursuant to and in accordance with that prescription; or
- (3) When the parent or legal guardian of the underage person physically gives the alcohol to that underage person when in their own residence and while in their presence and as permitted under O.C.G.A. § 3-3-23, as amended.

(b) Notwithstanding the exemptions for protected activities found in section 6-135(a) of this article, if an underage person leaves said private property intoxicated where he or she was provided the alcohol and is found in public, then said furnishers of alcoholic beverages to that underage person shall be held responsible in the same manner as furnishers of alcoholic beverages to underage persons at nonprotected activities.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-136. - Separate violation for each incident.

Each incident in violation of section 6-134 shall constitute a separate offense.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-137. - Enforcement authority.

The city police department, the city attorney, and any other person designated by the mayor and city council are authorized to administer and enforce the provisions of this article. The city police department, the city attorney, and any other person designated by the mayor and the city council may exercise any enforcement powers provided by law.

(Ord. No. 2012-14, 12-17-12)

Sec. 6-138. - Enforcement remedies.

(a) Criminal penalties.

- (1) Consistent with O.C.G.A. § 36-32-10(a), the first violation of O.C.G.A. § 3-3-23 shall also be a violation of this article. Any person who violates O.C.G.A. § 3-3-23 shall be punished by a fine of not more than the maximum fine for which the Georgia Statutes provide for a violation of O.C.G.A. § 3-3-23.
- (2) Any parent who violates section 6-134(b) of this article may be assessed the maximum penalty for which the city Ordinances and Georgia Statutes provide for a misdemeanor.

(b) Civil penalties.

- (1) Any person who violates section 6-134(a), (b) and/or (c) of this article has committed a public nuisance constituting an immediate threat to public health, safety and welfare, warranting summary abatement and is guilty of a civil violation.
- (2) On the violation of section 6-134(a), (b) and/or (c), the violator shall be assessed a civil penalty for each such violation of not more than the maximum allowed by the city ordinances and the Georgia State Statutes.
- (3) Violations of section 6-134 of this article shall be noticed by citation, issued by the city police department. The citation shall also give notice of the right to request a hearing to challenge the validity of the citation, the time for requesting that hearing, and that the person has a right to appeal.

(Ord. No. 2012-14, 12-17-12)



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: February 23, 2026
TITLE: **Minutes: February 9, 2026 Work Session**
Approval of the February 9, 2026 City Council Work Session Minutes

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 2026-02-09 City Council Work Session Draft Minutes

**MINUTES OF CITY COUNCIL WORK SESSION MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)**

**Livestream: www.kennesaw-ga.gov/publicmeetings/
February 9, 2026
6:30 PM**

Present Mayor Derek Easterling
 Mayor Pro Tem Antonio Jones
 Councilmember Madelyn Orochena
 Councilmember Tracey Viars
 Councilmember Jonathon Bothers
 Councilmember Anthony Gutierrez-Leon
 City Clerk Lea Alvarez
 City Manager Jeff Drobney
 City Attorney Sam Hensley, Jr.

1. Invocation

2. Pledge of Allegiance

3. Call to Order

Mayor Easterling called the meeting to order at 6:30 p.m.

4. Announcements

5. Presentations

C. Ordinance: Rezoning Request for 2995 & 2997 N Main Street

Consideration for approval of an ordinance authorizing a rezoning request submitted by Dean Klein for the unassigned right-of-way (ROW) located at 2995 & 2997 N Main Street (parcel # 20013900140, 20013900130). Case #RZ2026-02

[The agenda was taken out of order and this item was presented first. Councilmember Orochena recused herself from discussion].

Assistant City Attorney Fred Bentley, Jr. presented an ordinance authorizing a rezoning request submitted by Dean Klein for the unassigned right-of-way located at 2995 and 2997 North Main Street. Mr. Bentley explained that the Council will consider two related items next Monday concerning Mr. Klein's property. The parcel in question is a portion of right-of-way that the City previously agreed to abandon, pursuant to state law permitting the sale of such property to an adjoining landowner.

Based on a formal appraisal valuing the property at \$7,000, Mr. Klein has agreed to purchase the parcel and cover all associated expenses. The transaction is contingent

upon Council approval of the rezoning and re-plat requests. Upon approval and fulfillment of the required conditions, Mr. Bentley indicated that he would finalize the transaction administratively and coordinate for the Mayor to execute a quitclaim deed conveying the property to Mr. Klein.

Mayor Easterling noted that Item 16.B on the agenda is related to this matter and will not need to be reconsidered later during the meeting.

B. Final Plat Application: 2995 & 2997 N Main St (Unassigned Right-of-Way)

Approval of the final plat application submitted by Dean Klein; this plat will consolidate 0.11 +/- acres of unassigned right-of-way into the existing residential tracts located at 2995 & 2997 N Main St. (Parcel numbers #20013900130 & 20013900140). Case #PC2026-01

[Item 16. B was reviewed along with Item 9.C].

A. Discussion: Lazy Guy Distillery

Briefing to the Mayor and Council regarding an application for bonds-for-title incentives through the Kennesaw Downtown Development Authority from Lazy Guy Distillery.

[Councilmember Viars recused herself from the discussion on this item].

Economic Development Director Luke Howe presented an overview of a bonds-for-title incentive application submitted by Lazy Guy Distillery through the Kennesaw Downtown Development Authority (KDDA). Lazy Guy Distillery, a locally owned business operating in Kennesaw since 2013, is seeking approval of an abatement savings schedule, which will be considered by the KDDA this Friday. Staff is recommending a 20-year agreement under which the owner, Mark Allen, would continue paying property taxes on the land, which is approximately \$2,500 annually, while the City would abate taxes on the new property value. Over the 20-year term, the projected tax savings total approximately \$970,000. However, Mr. Howe noted that legal fees associated with such agreements typically range from \$100,000 to \$200,000, reducing the net savings to an estimated \$770,000.

Councilmember Orochena asked Mr. Howe to clarify how this proposal compares to other incentive bonds previously issued by the City. Mr. Howe explained that this is not a PILOT bond. He noted that a PILOT bond is a contract revenue bond involving an actual bond issuance backed by the City, similar to the structure offered to Dale Hughes. The City has not issued a PILOT bond since The Columns development. When Councilmember Orochena asked whether this proposal was more comparable to the Lacy project, Mr. Howe confirmed that it was.

Councilmember Orochena expressed concern that a 20-year term may be excessive. Mr. Howe acknowledged that he generally prefers shorter terms but explained that the extended period is necessary due to the relatively modest size of the project, estimated at \$3–4 million. Projects in this range are often the most difficult to finance: they are too small to attract investment banks, yet larger than what many community banks typically support. He stated that a 20-year structure was the only way to generate meaningful

savings. By contrast, a 10-year term can be viable for higher-density projects, such as the Lacy, where the tax savings are more substantial.

Councilmember Orochena also voiced concern that, over a 20-year period, much of the investment would begin to depreciate. Mr. Howe responded that the agreement could be structured to terminate either at the end of 20 years or once Lazy Guy Distillery reaches \$750,000 in savings, whichever occurs first.

6. Old Business

7. New Business

8. Committee and Board Reports

A. Road Closures: Big Shanty Festival

Consideration for approval of road closures on April 17-19, 2026 to support the Big Shanty Festival.

Assistant City Manager Marty Hughes read the road closures to support the Big Shanty Festival as written in the agenda item.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular City Council meeting.

9. Public Hearing(s)

A. Ordinance: Rezoning Request for 6095 Pine Mountain Road

Consideration for approval of an ordinance authorizing a rezoning request submitted by DRB Group Georgia, LLC for the property located at 6095 Pine Mountain Rd (parcel #20014001380). Case #RZ2025-03

Planning and Zoning Director Chanelle Campbell presented an ordinance authorizing a rezoning request submitted by DRB Group Georgia, LLC for the property located at 6095 Pine Mountain Road. The applicant is requesting to rezone approximately 8.82 acres from Highway General Business (HGB) to Planned Unit Development (PUD) – Residential to allow for the development of 89 fee-simple townhomes. The case was initially presented to the Mayor and Council in January, at which time it was postponed to the February cycle. At its February 4, 2026, regular meeting, the Planning Commission recommended approval with conditions as outlined by staff. A comprehensive presentation will be provided to the Mayor and Council on Monday.

Councilmember Bothers inquired about the location of the primary entrance and exit for the development. Ms. Campbell responded that, according to the applicant's submitted site plan, access would be provided via Pine Mountain Road and Cobb Parkway. Councilmember Bothers also asked whether there were any plans to address traffic concerns on Pine Mountain Road, specifically whether measures were being considered to alleviate or divert traffic in that area. Ms. Campbell stated that staff required the applicant to complete a traffic impact study. Based on the analysis conducted by the applicant's engineers and traffic professionals, the addition of 89

townhomes is not expected to generate traffic volumes significant enough to warrant roadway improvements or additional mitigation measures by either the City or the developer.

B. Ordinance: Rezoning Request for 1600 Old 41 Hwy

Consideration for approval of an ordinance authorizing a rezoning request submitted by Walton Communities, LLC for the properties located at 1600 Old 41 Hwy (parcel # 20021200130, 20021201560). Case #RZ2026-01

Planning and Zoning Director Chanelle Campbell presented an ordinance authorizing a rezoning request submitted by Walton Communities, LLC for the property located at 1600 Old Highway 41. The applicant is seeking to rezone the site from RM-12, Multifamily District and General Commercial, to RM-16, Multifamily Residential.

On January 23, 2026, the applicant submitted a formal letter requesting that the case be postponed to the March 2026 public hearing cycle. At its February 4, 2026, meeting, the Planning Commission unanimously recommended approval of the request to defer the hearing.

D. Ordinance: Unified Development Code Text Amendment

Consideration for approval of an ordinance to amend the Unified Development Code, Appendix A, Section 2.01.03 “Residential Zoning Districts” and Section 9.01.00 “Nonconforming Uses” of said chapter as submitted by the City of Kennesaw. Case #MISC2026-02

Planning and Zoning Director Chanelle Campbell presented an ordinance to amend the Unified Development Code, Appendix A, specifically Section 2.01.03, “Residential Zoning Districts,” and Section 9.01.00, “Nonconforming Uses,” as proposed by the City of Kennesaw.

The proposed amendments are intended to reduce unnecessary burdens on property owners whose lots became nonconforming as a result of prior updates to the Development Code. The revisions aim to provide greater clarity, improve administrative consistency, and ensure that legally established lots are not required to seek variances in circumstances that have historically come before the Mayor and Council.

This item was duly advertised in the Marietta Daily Journal on January 16, 2026.

E. Ordinance: 2026 Zoning Map

Consideration for approval of an Ordinance to adopt the 2026 Official Zoning Map for the City of Kennesaw. Case # MISC2026-03

Planning and Zoning Director Chanelle Campbell presented an ordinance to adopt the 2026 Official Zoning Map for the City of Kennesaw. This annual action incorporates all rezonings, annexations, and other zoning map amendments approved since the adoption of the 2025 Official Zoning Map.

This item was duly advertised in the Marietta Daily Journal on January 16, 2026. A comprehensive presentation will be provided to the Mayor and Council on Monday.

10. Consent Agenda

A. **Minutes: February 2, 2026 Regular Meeting**

Approval of the February 2, 2026, City Council regular meeting minutes.

11. General and Administrative

A. **Resolution: GovMVMT Purchasing Agreement**

Consideration for approval of a Resolution authorizing an agreement with GovMVMT for cooperative purchasing.

Assistant City Manager Marty Hughes presented a resolution authorizing an agreement with GovMVMT for cooperative purchasing. Mr. Hughes stated that GovMVMT is a national purchasing organization that assists public agencies in reducing the cost of purchased goods and services through strategic sourcing that combines volumes and the purchasing power of public agencies nationwide. This is accomplished through an award of competitively solicited contracts for high-quality products and services by large and well recognized public agencies known as Lead Public Agencies. The contracts allow usage by the Lead Public Agency and by other Participating Public Agencies. Fairfax County, VA serves as a Lead Public Agency for playground equipment, which would allow the City of Kennesaw to enter this contract as a "Participating Public Agency" in order to secure a competitive price for the playground equipment needed for Chalker Park.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular City Council meeting.

B. **Alcohol License: Shree Pizzeria D/B/A Johnny's New York Style Pizza**

Consideration for approval of a Retail Pouring Alcohol License for Beer, Wine, and Sunday Sales for Shree Pizzeria, LLC D/B/A Johnny's New York Style Pizza located at 1635 Old 41 Highway NW, Suite 104, Kennesaw, GA 30152. Applicants: Kinjal Patel and Pratikkumar Patel

Assistant Director of Administrative Services Meredith Staton presented a Retail Pouring Alcohol License for beer, wine, and Sunday sales for Shree Pizzeria, LLC D/B/A Johnny's New York Style Pizza located at 1635 Old 41 Highway NW, Suite 104.

The applicants have completed the required alcohol workshop per Section 6-69. Signs have been posted, and the hearing has been properly advertised per Section 6-36. The current application and background checks are on file. A distance survey was completed by a certified surveyor and indicates that the business is within 300 feet of a private residence. Section 6-42 indicates that the Mayor and Council may waive the distance requirement if the granting of such a license shall not have any adverse effect on the private residence.

12. Public Safety

A. **Resolution: Purchase of 911 Dispatch Consoles**

Consideration for approval of a Resolution authorizing the purchase of dispatch consoles for the Kennesaw/Acworth 911 Dispatch Center from Evans Consoles Incorporated.

911 Director Nikki McGraw presented a resolution authorizing the purchase of dispatch consoles for the Kennesaw/Acworth 911 Dispatch Center from Evans Consoles Incorporated. Staff is requesting approval to accept the proposal through the HGAC Cooperative purchasing agreement for the procurement and installation of four (4) dispatch consoles.

The total cost of \$116,372.49 includes transportation, offloading, installation, removal and disposal of the existing four (4) consoles, and three (3) years of the EvansCare Preventative Maintenance and Cleaning Agreement. These consoles are a critical component of the 911 Center's daily operations and directly impact dispatcher safety, operational efficiency, and the long-term functionality and durability of the workspace.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular City Council meeting.

B. Crime Stats: January 2026

Consideration for the acceptance of the January 2026 crime statistics.

Chief Bill Westenberger presented the January 2026 crime statistics [See **Exhibit A**].

Mayor Pro Tem Jones asked Chief Westenberger to provide an update regarding two officers and their ongoing relationship with a family in the community. Chief Westenberger shared that in December 2023, the officers responded to a call involving the tragic passing of a young child.

Since that time, the officers have remained in contact with the family, offering continued support through notes, flowers, cards, and other gestures of compassion, particularly on the anniversary of the child's passing. Chief Westenberger noted that this is just one example of the dedication and character of the men and women who serve with the Kennesaw Police Department.

13. Information Technology

14. Public Works and Building Maintenance

15. Recreation and Culture

A. Resolution: Playground Equipment and Shade Structures for Chalker Park

Consideration for approval of a Resolution authorizing a proposal by Play South Playground Creators for the purchase and installation of playground equipment, rubberized surface, and shade structures for Chalker Park.

Parks and Recreation Director Bill McNair presented a resolution authorizing a proposal by PlaySouth Playground Creators for the purchase and installation of playground equipment, rubberized surface, and shade structures for Chalker Park.

Play South Playground Creators pricing is based on governmental contract pricing through the cooperative purchasing agency, GovMVMt, as permitted by O.C.G.A § 36-69A. The total of the proposal is \$191,561.20.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the next regular City Council meeting.

B. Resolution: 2026 RCS Productions Contract

Consideration for approval of a Resolution executing a contract with RCS Productions Inc. for the 2026 Concert Series.

Assistant Parks and Recreation Director Elizabeth Weaver presented a resolution authorizing the execution of a contract with RCS Productions, Inc. for production services associated with the 2026 Concert Series and the Salute to America event. The total contract amount is \$135,900.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the next regular City Council meeting.

C. Road Closures: 2026 Parks and Recreation Events

Consideration for approval of road closures to support 2026 Parks and Recreation events including: Touch a Truck, Gran Prix 5K Race Series, Concert Series, and Salute to America.

Assistant Parks and Recreation Director Elizabeth Weaver presented road closures to support 2026 Parks and Recreation events, including Touch a Truck, Grand Prix 5K Race Series, Concert Series, and Salute to America [See **Exhibit B**].

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the next regular City Council meeting.

16. Community Development

A. Final Plat Application: 1992, 2026, 2036 & 2046 Maple Dr

Approval of the final plat application submitted by Lynne Watts; this plat will consolidate six (6) lots into one tract consisting of 3.66 +/- acres (Parcel numbers #20010003300, 20010003310, 20010002990 & 20010000980).
Case# PC2025-01

Planning and Zoning Director Chanelle Campbell presented a final plat application submitted by Lynne Watts to consolidate six (6) lots into a single tract totaling approximately 3.66 acres. Ms. Campbell noted that, while this is an unusual request, the applicant owns all six parcels. The lots have remained vacant due to a stream running through the property, which makes the individual parcels undevelopable.

The consolidation will create one unified tract that accounts for environmental constraints and aligns with current development feasibility. The Plan Review Committee, including representatives from Cobb Water, Cobb Fire, and other internal departments, has reviewed the plat and determined it to be in compliance,

recommending approval.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the next regular City Council meeting.

17. Public Comments

7:04 p.m. Floor Open for Public Comments

MARY MILLER [City Resident]: When she began paying closer attention to city government, Ms. Miller learned about the Kennesaw Downtown Development Authority (KDDA), an organization responsible for decisions regarding real estate, business incentives, and the allocation of certain funds. She found it concerning that KDDA members could have personal or professional relationships with City Council members or other city officials. Ms. Miller was surprised to discover that there is no statute prohibiting family members, business partners, or other significant relationships from serving in these overlapping roles, and she suggested that one might expect the Ethics Board to have concerns about such situations.

Currently, the KDDA is being asked to consider a bonds-for-title application for the new Lazy Guy Distillery location. The owner, Mark Allen, is also a KDDA member. The City Council liaison to the KDDA, Councilmember Viars, is involved in real estate and maintains both a personal and professional relationship with Mr. Allen. Ms. Miller believes the Council should evaluate whether such relationships should be allowed in the future and consider establishing clear limits on who may serve on the KDDA, as she sees the current situation as potentially problematic.

7:06 p.m. Floor Closed for Public Comments

18. City Manager's Report

- A. Reports, Discussions, and Updates

19. Mayor's Report

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

20. Council Reports & Discussions

- A. **Discussion: Natural Playground in Depot Park**
Discussion item as requested by Councilmember Orochena regarding the addition of a "natural playground" or "playscape" area in Depot Park.

Councilmember Orochena sought the Council's input on the potential addition of a natural playground at Depot Park. She shared several photos to illustrate her vision, emphasizing a design that reflects the natural environment and encourages creative

play. She noted there is strong public interest in the idea and wanted the Council to discuss it as a group.

Mayor Pro Tem Jones expressed some reservations but mentioned that, after speaking with his wife, he felt children need a play space downtown. He expressed concern about parents potentially leaving children unsupervised during events like the concert series but indicated he liked the natural playground concept.

Councilmember Gutierrez-Leon expressed support for the idea, stating that a playground would enhance Depot Park and appreciated the natural aspect of the proposed play area. He inquired if there was an estimated cost. Mayor Easterling responded that the initial question was whether there was general support for the idea.

Councilmember Bothers stated that, personally, he does not feel a playground is necessary at Depot Park, noting that Adams Park and Swift-Cantrell Park are nearby. However, he acknowledged that many residents feel differently. He also noted that the natural playground concept was different from what he had envisioned and asked about potential placement within the park. Mayor Easterling reiterated that the question was about general support, to which Councilmember Bothers replied affirmatively.

Councilmember Viars commented that Depot Park has its own character and shared some of Mayor Pro Tem Jones' concerns, particularly regarding unsupervised children during events. She asked about potential funding for the project and whether the playground might be better located elsewhere in the park rather than near the amphitheater.

Councilmember Bothers agreed, stating he did not want the playground near the amphitheater. Mayor Pro Tem Jones concurred.

Councilmember Orochena expressed concern that placing the playground on the far side of Depot Park might lead to additional issues with unsupervised children.

Ultimately, Mayor Easterling stated that he does not support adding a playground at Depot Park.

21. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

22. Adjourn

Mayor Easterling adjourned the meeting at 7:16 p.m. The regular meeting will be held on Monday, February 16, 2026, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend.

Lea Alvarez, City Clerk

DRAFT

January 2026 Crime Statistics



Group A Crimes	Jan 2026	Jan 2025	YTD 2026	YTD 2025
AGGRAVATED ASSAULT	7 (+2)	5	7 (+2)	5
ANIMAL CRUELTY	0 (+0)	0	0 (+0)	0
ARSON	0 (+0)	0	0 (+0)	0
BRIBERY	0 (+0)	0	0 (+0)	0
BURGLARY	4 (-2)	6	4 (-2)	6
DRUG/ NARCOTICS OFFENSES	35 (+4)	31	35 (+4)	31
EMBEZZLEMENT	0 (+0)	0	0 (+0)	0
EXTORTION	0 (+0)	0	0 (+0)	0
FORGERY	0 (-3)	3	0 (-3)	3
FRAUD OFFENSES	20 (+4)	16	20 (+4)	16
HOMICIDE OFFENSES	0 (+0)	0	0 (+0)	0
INTIMIDATION	7 (-7)	14	7 (-7)	14
KIDNAPPING	1 (+0)	1	1 (+0)	1
LARCENY/ THEFT OFFENSES	10 (-5)	15	10 (-5)	15
MOTOR VEHICLE THEFT	1 (-3)	4	1 (-3)	4
PORNOGRAPHY OBSCENE MATERIAL	0 (+0)	0	0 (+0)	0
ROBBERY	1 (+1)	0	1 (+1)	0
SEX OFFENSES	3 (+0)	3	3 (+0)	3
SIMPLE ASSAULT	16 (+3)	13	16 (+3)	13
STOLEN PROPERTY OFFENSES	1 (-2)	3	1 (-2)	3
VANDALISM	3 (-4)	7	3 (-4)	7
WEAPONS LAW VIOLATIONS	4 (+0)	4	4 (+0)	4
Totals	113	125	113	125

	Jan 2026	Jan 2025	YTD 2026	YTD 2025
Dispatched Calls for Service	693 (-2)	695	693 (-2)	695
Self-Initiated Activity	1,587 (+239)	1,348	1,587 (+239)	1,348
Traffic Citations	813 (+253)	560	813 (+253)	560
Traffic Warnings*	784 (+2)	782	784 (+2)	782
Arrests**	86 (+0)	86	86 (+0)	86

	Jan 2026	Jan 2025	YTD 2026	YTD 2025
Auto Accidents	98 (+11)	87	98 (+11)	87
Accident w/ Injury	7 (-10)	17	7 (-10)	17
Hit and Run	11 (+2)	9	11 (+2)	9
Hit and Run w/ Injury	0 (-1)	1	0 (-1)	1
Person Hit by Auto w/ Injury	0 (+0)	0	0 (+0)	0

* Warnings do not include verbal warnings
 ** Arrests do not include juvenile arrests

2026 Road Closures for Touch a Truck, Grand Prix, Salute, and Concerts

Touch a Truck

- Event Timeline
 - 8:00am – Vendor/Sponsor Load In Begins
 - 9:00am – Vendor/Sponsor Load In Ends
 - 10:00am – Event Begins
 - 2:00pm – Event Ends

The following road closures support the Kennesaw Touch a Truck on Saturday, March 7:

- Park Drive, 7:00am – 3:00pm

Grand Prix

- Event Timeline
 - 6:30am - Race Day Packet Pickup and Day of Registration Begins
 - 7:30am - 1 Mile Fun Run Start
 - 8:00am - Wheelchair Start
 - 8:05am – 5K Start
 - 8:55am - Tot Trot
 - 9:15am - Awards Ceremony

The following road closures support the Kennesaw Grand Prix Race Series on the following Saturdays; April 11, June 6, September 19, October 31:

Main Street will be closed from Watts Drive to Cherokee Street from 6:00am – 10:00am

The following Roads will be closed at Main Street from 7:00am – 9:30am:

- J.O. Stephenson Avenue
- Cherokee Street
- Lewis Street
- Moon Station Road
- Dallas Street
- Whitfield Place
- Park Drive
- Knightsbridge Road
- Paulding Street
- Jiles Road
- Rutledge Road NW
- Cathey Lane

Kennesaw Police will be on-site to monitor traffic and allow cross traffic at Knightsbridge and Jiles Road while ensuring the safety of runners and walkers.

Concert Series

Dates: March 28th, May 2nd, August 22nd, September 26th

Event Timeline:

7 am - Chair Drop Off Begins

10:30am - Tech load in
4pm - Sound Check
4:30pm - Vendor and Sponsor Load In
5:30pm - Sponsors and Vendors Ready to Go
7pm - Opener Takes the stage
8pm Headliner takes the stage
10:30pm Event Ends

The following road closures support the 2026 concert series at United Bankshares Amphitheater.

Cherokee Street will be closed from Big Shanty Drive to Main Street from 4 pm – 11 pm

The Depot Park parking lot will be closed by 6am the Friday night before each concert.

Salute to America 250 Celebration

- Event Timeline
 - 12:30pm - Vendor/Sponsor Load In Begins
 - 2:30pm - Vendor/Sponsor Load In Ends
 - 4:00pm - Event Begins
 - 9:30pm - Fireworks
 - 10:00pm - Event Ends
- The following road closures support the Salute to America, July 3rd event:
 - The following roads will be closed from 11:00am – 12:00 Midnight on Friday, July 3:
 - ♣ Main Street closed from Lewis St. to Summers Street
 - ♣ Cherokee Street from Big Shanty Drive to Main Street
 - ♣ J.O. Stephenson Ave. from Main St. to Dallas St.
 - ♣ Watts Dr. from Main Street to Dallas Street
 - The parking lots at Tunnel Plaza and Main Street Eats will be closed 11:00am – 12:00 Midnight on Friday, July 3
 - Shirley Drive will be closed from Cherokee Street to Carruth Street from 3:00pm - 10:30pm for fireworks
 - Depot Park parking lot will be closed at 6am on Tuesday, July 2
 - City Hall parking lot will close at 5:00pm Wednesday, July 3

DRAFT

Names and Addresses will be disclosed in the Permanent Minutes of the
City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

City Council Work Session

2/9/2026

Public Comment Sign-in

Name

Address

Topic

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DRAFT



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: February 23, 2026
TITLE: **Minutes: February 16, 2026 Regular Meeting**
Approval of the February 16, 2026 City Council Regular Meeting Minutes

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council
FROM: Ricky Stewart, Public Works Director
DATE: February 23, 2026
TITLE: **Resolution: Landscaping at Southern Museum**
 Consideration for approval of a Resolution accepting the proposal from Creative Landscape Group to replace landscaping at the Southern Museum.

Summary:

Staff requested that Creative Landscape Group submit a proposal to remove existing landscape material, reclaim and preserve existing material, design a new landscape plan, and install new plant material at the Southern Museum. Creative Landscape Group submitted a proposal that satisfies the request for the amount of \$47,725.00.

Recommendation:

The Public Works Director recommends approval of the proposal from Creative Landscape Group.

Fiscal Impact:

100.4200.53.118100.00000 Landscape Materials/Supplies

Attachments:

1. RES 2026 - Southern Museum Landscape - Creative Landscape
2. Attachment A - Southern Museum Proposal

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2026-__

**RESOLUTION TO APPROVE A PROPOSAL WITH CREATIVE LANDSCAPE GROUP
TO REPLACE LANDSCAPING AT THE SOUTHERN MUSEUM**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, the City desires to engage a qualified and experienced Contractor to remove existing landscape material, reclaim and preserve existing material, design a new landscape plan, and replace with new plant material at the Southern Museum; and

WHEREAS, Creative Landscape Group has represented to the City they are experienced and qualified to perform those services; and

WHEREAS, Per section 6 in the existing Landscape Services Agreement with Creative Landscape Group, adjustments of quantities by reason of change in site size or scope is permitted; and

WHEREAS, Creative Landscape Group has offered to provide the required services for an amount of \$47,725.00.

BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to execute a proposal with Creative Landscape Group to perform described work as shown as Attachment A.

BE IT FURTHER RESOLVED this Resolution shall become effective from and after its adoption and execution by the Mayor.

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of March 2026.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor



CREATIVE
LANDSCAPE GROUP
LANDSCAPE INSTALLATION PROPOSAL

Southern Museum of Civil War and Locomotive History

Scope of Work

1. Drainage – Left Side

Scope:

- Install (2) catch basins at the base of the downspouts on the front left of the building.
- Pipe both downspouts to daylight, extending 10’ beyond the building foundation.
- Install (5) catch basins along the left side of the building at the base of each downspout, piping each line to 10’ beyond the foundation.
- Regrade the hillside to improve runoff direction and prevent pooling near the structure.
- Install weed fabric and rip rap along the side of the building to stabilize the slope.
- Cut a clean turf edge and finish with pine straw for a neat appearance.

Recommendation:

Repair the gutter section on the left side of the building (see attached photos for reference).

Project Cost: \$7350.00

2. Front Planting

Scope:

- Remove and dispose of all existing plant material.
- Kill off grass in the planting area and amend all planting beds with nutrient-rich compost.
- Till planting areas to encourage healthy root development.
- Install a railroad tie wall along the lower sidewalk (as shown in the design drawing).
- Place boulders at each end of the wall to visually anchor the design.
- Install all plant material listed below using industry best practices.
- Final grading, pre-emergent, and carbon pro application.
- Apply fresh mulch and pine straw.
- Install new Bermuda sod in areas where the magnolia was removed and any bare patches exist.

Plant List:

Plant	Size	Quantity	Description
Sunshine Anise	#7	25	Evergreen shrub with glossy leaves and bright yellow-green foliage; thrives in partial shade.
Crimson Fire Loropetalum	#3	92	Compact evergreen with deep burgundy foliage and pink fringe-like blooms in spring.
Limelight Hydrangea	#15	2	Large, upright hydrangea with chartreuse-to-white cone-shaped blooms; full sun to part shade.
Little Lime Hydrangea	#7	7	Dwarf version of Limelight; compact form with lime-white blooms ideal for foundation planting.
Sunshine Ligustrum	#3	39	Bright golden-yellow evergreen shrub, low maintenance, and sun-tolerant.

Plant	Size	Quantity	Description
Hicks Yew	4'+	4	Tall, narrow evergreen with deep green needles; perfect for vertical accents.
Shishi Camellia	#3	9	Low, spreading camellia with dark green foliage and vibrant pink blooms in fall.
Atlas Cedar	10'+	1	Majestic evergreen tree with blue-green needles; excellent focal specimen.
Horstman Atlas Cedar	5'	1	Compact, pyramidal blue cedar variety with striking color.
Serpentine Atlas Cedar	—	2	Unique, contorted form of Atlas cedar offering strong sculptural character.
Black-Eyed Susan	#1	14	Bright yellow daisy-like perennial that blooms in summer through fall.
Acorus Grass	5 flats	—	Low-growing evergreen grass with fine texture; ideal for borders and wet areas.
Bermuda Sod	2 pallets	—	Durable warm-season turf grass with excellent drought tolerance.

Project Cost: \$24,680.00

3. Left Side Cleanup

Scope:

- Remove all Carissa hollies and the (2) Foster hollies.
- Cut the burning bush down to 24" and perform a hard prune on all existing material along the hillside.
- Selectively weed unwanted plants and remove volunteer trees.
- Trench a new, clean edge along the sidewalk.
- Apply fresh mulch and pine straw throughout the area.

Project Cost: \$3860.00

4. Right Side of Museum

Scope:

- Amend soil and replant where material has died out, been removed, or is missing, per the plant list below.
- Clean up the decorative gravel area and area surrounding the drain inlet.
- Lay new Bermuda sod around the drain inlet.
- Apply pre-emergent and carbon pro to newly planted areas.
- Spread fresh mulch and pine straw throughout beds.

Plant List:

Plant	Size	Quantity	Description
Coppertone Distylium	#3	75	Evergreen shrub with bronze-red new growth maturing to blue-green; low-maintenance and drought tolerant.
Dwarf Cast Iron Plant	#1	25	Hardy evergreen groundcover with dark green strap-like leaves; thrives in deep shade.
Pixie Loropetalum	#7	15	Compact loropetalum with rich purple foliage and pink blooms; ideal for layering.
Shasta Daisy	#1	20	Classic white daisy perennial with bright yellow centers; blooms summer through fall.

Plant	Size	Quantity	Description
Itea (Virginia Sweet spire)	#3	16	Native deciduous shrub with fragrant white flower spikes in spring and red fall color.
Big Blue Liriope	Flats (5)	—	Evergreen border grass with lavender flower spikes; tolerant and adaptable.
Crimson Fire Loropetalum	#3	11	Compact burgundy-leaf loropetalum with pink spring blooms; provides year-round color.
Hicks Yew	4'	2	Tall evergreen shrub is ideal for vertical structure or screening.
Cinnamon Girl Distylium	#3	12	Dense evergreen with reddish-bronze new growth and fine texture; low maintenance.
Catlin's Giant Ajuga	Flats (3)	—	Low groundcover with dark purple leaves and blue flower spikes in spring.
Ornamental Grasses	—	30	To be selected at planting; provides seasonal movement and texture.

Project Cost: \$11,835.00

Project Total: \$47,725.00

All projects require a 50% deposit to be placed on the calendar. Balance will be due upon completion. Please allow \$1000.00 for contingencies.

Acceptance of proposal X:

Please apply 2.99% for payment with credit card. 1.99% for ACH

Creative Landscape Group
1265 Acworth Due West Rd.
Kennesaw, GA 30152
(c)770-757-9891

creativecutslandscapes@gmail.com



Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: February 23, 2026

TITLE: **Resolution: 2026 Community Development Block Grant Subrecipient Agreement**
 Consideration for approval of a Resolution authorizing the program year 2026
 Community Development Block Grant (CDBG) Subrecipient Agreement between Cobb
 County and the City of Kennesaw.

Summary:

The Cobb County Board of Commissioners has appropriated \$113,322.00 for the City of Kennesaw's continuation of the Community Development Block Grant (CDBG) program. This grant will be used for new sidewalks and/or drainage improvements in the City's disadvantaged neighborhoods. Before the funds can be awarded, the City must execute a Subrecipient Agreement with Cobb County that stipulates the City will comply with the responsibilities outlined for the CDBG program.

Recommendation:

The Public Works Director recommends approval.

Fiscal Impact:

Attachments:

1. RES 2026 CDBG Subrecipient Agreement
2. Subrecipient Agreement

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2026-____

**RESOLUTION AUTHORIZING SUBRECIPIENT AGREEMENT FOR USE OF
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS BETWEEN COBB
COUNTY AND CITY OF KENNESAW COBB COUNTY SUBRECIPIENT
AGREEMENT NO. CD26-C26C3-F, HUD GRANT NO. B-26-UC-13-0002**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, Cobb County has received a Program Year 2026 Community Development Block Grant (CDBG) under Title 1 of the Housing and Community Development Act (HCDA) of 1974, as amended, HUD grant number B-25-UC-13-0002; and

WHEREAS, Cobb County Board of Commissioners has appropriated \$113,322.00 for the City of Kennesaw's use, Cobb County Subrecipient Agreement No. CD25-C25C3-F; and

WHEREAS, the Subrecipient Agreement must be executed for the City to receive these funds.

NOW, THEREFORE BE IT RESOLVED the City of Kennesaw authorizes the Mayor to execute the Subrecipient Agreement for Community Development Block Grant funds.

PASSED AND ADOPTED at a regular meeting of the Kennesaw Mayor and Council on this ____ day of March, 2026.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

COBB COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



PUBLIC FACILITIES SUBRECIPIENT AGREEMENT PROGRAM YEAR 2026

CITY OF KENNESAW

TABLE OF CONTENTS

Item 1. Use of Funds	3
Item 2. Duration of Agreement	4
Item 3. Uniform Administrative Requirements	4
Item 4. Subrecipient's Obligation	4
Item 5. Compliance with all CDBG Regulations at 24 CFR §570.....	4
Item 6. Record Keeping/Reporting	4
Item 7. Funding.....	6
Item 8. "Hold Harmless"	6
Item 9. Procurement.....	7
Item 10. Property Acquisition and Relocation Services	8
Item 11. Real Property / Non-Real Property [Non-Expendable] Continued Use.....	9
Item 12. "Force Account" Work	11
Item 13. Wage Rates	11
Item 14. Contracting with Small or Minority/Women Owned Businesses	11
Item 15. "Section 3" Clause	12
Item 16. Environmental Clearance.....	13
Item 17. Technical Assistance	13
Item 18. Review Authority	13
Item 19. Agreement Amendment(s).....	13
Item 20. Effective Date and Termination Date	14
Item 21. Program Income	14
Item 22. Audits.....	14
Item 23. Performance.....	17
Item 24. Disputes, Default, and Termination.....	17
Item 26. Suspension and Termination	17
Item 27. Repayments	18
Item 28. Use of CDBG funds by Faith Based Organizations.....	18
Item 29. Recognition of Cobb County Board of Commissioners and the CDBG Program Office.....	19
Item 30. Allowable Costs for Pre-Award	19
Item 31. Reimbursement Process.....	19
Item 33. Hatch Act.....	20
Item 34. Lobbying.....	21
Item 35. Insurance.....	21
Item 36. Registration.....	21
Item 37. BUILD AMERICA, BUY AMERICAN (BABA) - Construction Materials (FAR 52.226-9) (November 15, 2021)	22
HUD's Phased Implementation Schedule	25
SIGNATURE PAGE	26
ATTACHMENT A.....	27
ATTACHMENT B.....	31
ATTACHMENT C.....	33
ATTACHMENT D.....	34
ATTACHMENT E.....	35
ATTACHMENT F.....	36
ATTACHMENT G.....	37
ATTACHMENT H.....	42
ATTACHMENT I.....	43
ATTACHMENT J.....	44
ATTACHMENT K.....	45
ATTACHMENT L.....	46
ATTACHMENT M.....	47
ATTACHMENT N.....	49
ATTACHMENT O.....	50

PY2026
COBB COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
SUBRECIPIENT AGREEMENT

NAME OF SUBRECIPIENT: **CITY OF KENNESAW**

SUBRECIPIENT AGREEMENT (CONTRACT) NUMBER: **CD26-C26C3-F**

HUD GRANT NO: **B-26-UC-13-0002**

THIS AGREEMENT, made and entered into on the 1st day of January 2026 by and between Cobb County, a political subdivision of the State of Georgia acting by and through its duly elected Board of Commissioners [BOC], hereinafter referred to as the "County", and **CITY OF KENNESAW**, a CDBG Subrecipient organization (either a participating municipality in the Cobb County Urban County CDBG Program, a quasi-local government agency, a local housing authority, or a private non-profit organization), hereinafter referred to as the "Subrecipient", located within the confines of the Cobb County, Georgia, and serving CDBG-eligible residents of Cobb County;

WITNESSETH:

WHEREAS, Cobb County has received a Program Year [PY] 2026 Community Development Block Grant [CDBG], hereinafter referred to as "CDBG" under Title I of the Housing and Community Development Act [HCDA] of 1974, as amended, to carry out various housing and community development activities in its unincorporated areas and in municipalities participating in the County CDBG Program; and

WHEREAS a total of **\$113,322.00 (Facility Improvements)** from Program Year 2026 CDBG funds has been appropriated by the Cobb County Board of Commissioners for award to the Subrecipient for the implementation of activities determined to be CDBG-eligible by the County; and

WHEREAS, the Subrecipient agrees to assume certain responsibilities for the implementation of its CDBG assisted activities, and certifies that it will comply with the applicable certifications contained in Attachment A; with the Scope of Services provided in Attachment B; with any amendments to this Agreement, included as Attachment C; with the Lease Agreement requirements included as Attachment E, if applicable; with the property use requirements included as Attachment F, if applicable; with the HUD regulations included as Attachment G; and, with the Subrecipients CDBG Application included as Attachment H;

NOW, THEREFORE, the parties hereunto do hereby agree as follows:

Item 1. Use of Funds

The Subrecipient shall expend all or any part of its CDBG allocation only on those activities contained in the Scope of Services of this Agreement, which activities the Cobb County CDBG Program Office shall determine to be eligible for CDBG funds, and shall notify the Subrecipient in writing, via this Agreement and/or subsequent amendments to this Agreement, of such determination of eligibility. **CDBG funds provided through this Agreement must be fully expended no later than December 31, 2026.**

Item 2. Duration of Agreement

The duration of the Subrecipient Agreement is as follows:

Agreement Effective Date	1/1/2026
Deadline for Expenditure of Funds	12/31/2026
Agreement Termination Date	12/31/2026
Deadline for Receipt of Final Reimbursement Request	1/31/2027

Item 3. Uniform Administrative Requirements

The Uniform Administrative Requirements, as promulgated in [2 CFR Part 200], shall apply to all activities undertaken by the Subrecipient with CDBG assistance provided via this Agreement and any subsequent amendments.

Other Program Requirements

The Subrecipient shall comply with all the requirements of 24 CFR § 570.600 - 570.614, as applicable to the Subrecipient's activity(s) to include: §570.603 Labor standards; §570.604 Environmental standards; §570.605 National Flood Insurance Program.; §570.606 Displacement, relocation, acquisition, and replacement of housing; §570.607 Employment and contracting opportunities; §570.608 Lead-based paint; §570.609 Use of debarred, suspended or ineligible contractors or subrecipients; §570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards; §570.611 Conflict of interest; §570.612 Executive Order 12372; §570.613 Eligibility restrictions for certain resident aliens; §570.614 Architectural Barriers Act and the Americans with Disabilities Act.

Item 4. Subrecipient's Obligation

The Subrecipient shall be responsible for carrying out its actions in accordance with the certifications contained in Attachment A of this Agreement. The Subrecipient shall take all necessary actions to comply with the requirements of the certifications/assurances in Attachment A, and to comply with any requests by the County in this connection; it being understood that the County has responsibility to the U.S. Department of Housing and Urban Development for insuring compliance with such requirements. The Subrecipient will also promptly notify the County of any changes in the scope or character of the activity(s) assisted through this Agreement.

Item 5. Compliance with all CDBG Regulations at 24 CFR §570

The Subrecipient shall comply with all the applicable requirements of 24 CFR §570 [CDBG Regulations] and OMB Circular 2 CFR §200, as applicable. These documents are incorporated as a part of this Agreement by reference, herein. Upon request, the referenced documents are also available from the Cobb County CDBG Program Office.

Item 6. Record Keeping/Reporting

Every Subrecipient is required to establish and maintain ***at least three major categories*** of records:

Administrative records: These are files and records that apply to the overall administration of the Subrecipient's CDBG activities. They include the following:

- Subrecipient Agreement
- Agreement Amendment (*if applicable*)

- Budget Revisions (*if applicable*)
- Notice to Proceed
- Grant Application for Funding
- Environmental Review must be completed by the CDBG Program Office prior to commencing project (*if applicable*)
- Project Eligibility Documentation (Provided by CDBG Program Office for CDBG Projects)
- CDBG Program Office Communications

Financial records: These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

The Subrecipient shall maintain financial records of the expenditure of all CDBG funds it receives, such records to be maintained in accordance with 2 CFR § 200.302 (3) and 24 CFR § 570.490, as applicable. All records shall be made available, upon County request, for inspection(s) and audit(s) by the County, or by its representatives. If a financial audit(s) determines that the Subrecipient has improperly expended CDBG funds, resulting in the disallowance of such expenditures by the County and/or by the U.S. Department of Housing and Urban Development, the County reserves the right to recover from the Subrecipient other non-CDBG monies to fund such disallowed CDBG expenditures. Audit procedures for the Cobb County CDBG Program are specified in Item 22 of this Agreement.

Project/case files: These files document the activities undertaken with respect to specific individual beneficiaries, income, property owners, and/or properties.

For limited clientele (including "Direct Service" and "Presumed Benefit") activities the Subrecipient shall provide, monthly, sufficient information to the County on services carried out for all persons served and on CDBG-eligible persons served by activities receiving CDBG assistance under this Agreement. The purpose of the monthly reporting is to enable the County to prepare and submit periodic and annual reports to the U.S. Department of Housing and Urban Development. **These Subrecipient-prepared reports shall be submitted in a format provided by the County at a time no later than the 15th calendar day of each month of each year until all CDBG funds for the activity(s) shall be fully expended, plus five (5) years. The five (5) year reporting period should not be confused with the "continued use" provisions of this Agreement, as specified in Attachment B, "Scope of Services."** The County shall provide reporting forms and technical assistance to the Subrecipient on the procedures to be followed to collect and report these programmatic data.

File Organization and Maintenance

Subrecipient should structure its project/case files and other records to comply with the general **CDBG standard for record keeping which** that records must be *accurate, complete and orderly*. Records should demonstrate that each activity undertaken meets one of the **National Objectives** for the CDBG program (24 CFR § 570.208 and particularly the record-keeping requirements at § 570.506(b) (1) - (12)) as reflected in Attachment J of this Agreement. All Subrecipients must comply with 24 CR § 5.609: Annual Income to determine the anticipated annual income of all adults in the household in accordance with the Part 5 definition of annual income.

Case File Organization

Subrecipient case files should include at minimum:

- Client File Checklist-Public Services
- Consent And Authorization to Disclose Information
- CDBG Monthly Expenditure Report
- CDBG Monthly Services Report
- Environmental Review Request Form
- Disclosure Of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
- VAWA Lease Addendum
- Income Calculation Form
- Self-Declaration of Income
- Declaration of Zero Income
- Self-Employment Certification
- Non-Real Property Inventory
- Documents Required for Reimbursement
- Reimbursement Cross Check Form
- Budget Revision Request Form

Documents should be placed in order of checklist. Each project should have a separate case file.

Documenting Eligibility (see Client File Checklist-Public Services)

Retention of Records

All accounting records, reports, and evidence pertaining to all costs, expenses and the CDBG funds of Subrecipient and all documents related to this Agreement shall be maintained and kept available at the Subrecipient's office or place of business for the duration of the Agreement and thereafter for five (5) years after completion of an audit in conformity with the CDBG regulations. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which the County or any other governmental agency takes exception, shall be retained beyond the five (5) years until complete resolution or disposition of such appeals, litigation claims or exceptions.

Item 7. Funding

The County agrees to provide the Subrecipient with CDBG funds in such amounts as agreed upon in this Agreement to enable the Subrecipient to carry out its CDBG-eligible activity(s). It is understood that the County shall be held accountable to the U.S. Department of Housing and Urban Development for the lawful expenditure of CDBG funds under this Agreement. Therefore, the County shall make no reimbursement of CDBG funds to the Subrecipient and draw no funds from HUD/U.S. Treasury on behalf of a Subrecipient activity(s), prior to having received proper invoice(s) and copies of supporting documentation from the Subrecipient for the expenses incurred, to ensure that the Subrecipient has complied with all applicable regulations and requirements.

Item 8. "Hold Harmless"

The Subrecipient does hereby agree to release, indemnify, and hold harmless the County, its employees and agents from and against all costs, expenses, claims, suits, or judgments arising from or growing out of any injuries, loss or damage sustained by any person or corporation, including employees of Subrecipient and

property of Subrecipient, which are caused by or sustained in connection with the tasks carried out by the Subrecipient under this Agreement.

Item 9. Procurement

The Subrecipient shall be responsible for procurement of all supplies, equipment, services, and construction necessary for implementation of its activity(s). Procurement shall be carried out in accordance with **2 CFR §200.320**.

The governing board of the Subrecipient shall formally adopt written procurement procedures which are at least as restrictive as those required in 2 CFR §200.320, or such thresholds as may be amended by federal regulation, and shall provide a copy of said procurement procedures and evidence of governing board adoption to the County at the time that this Subrecipient Agreement shall be returned to the County for signature by the Chairwoman of the Cobb County Board of Commissioners.

The Subrecipient shall prepare, or cause to be prepared, all advertisements, negotiations, notices, and documents; enter all contracts; and conduct all meetings, conferences, and interviews as necessary to ensure compliance with the procurement requirements described below:

2 CFR § 200.320 Methods of procurement to be followed. The Subrecipient must use one of the following methods of procurement:

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the Subrecipient must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Subrecipient considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c) (1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available.
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised.

- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond.
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- (2) Proposals must be solicited from an adequate number of qualified sources.
- (3) The Subrecipient must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The Subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source,
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation,
- (3) The Subrecipient or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Subrecipient, or
- (4) After solicitation of a few sources, competition is determined inadequate.

Item 10. Property Acquisition and Relocation Services

The Subrecipient shall be responsible for carrying out the acquisition of all real property necessary for the implementation of the activity(s), if applicable. The Subrecipient shall conduct all such acquisitions in its name and shall hold title to all properties purchased, [except in such cases as with long term leases (minimum term of 15 years)]. [Lease requirements are addressed in Item 11 of this Agreement]. The Subrecipient shall be responsible for the preparation of all notices, appraisals, and documentation required in conducting

acquisitions under the latest applicable regulations of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and of the CDBG Program. The Subrecipient shall also be responsible for providing all relocation notices, counseling, and services required by said regulations. Should the Subrecipient find it necessary to change the use of or dispose of the property acquired with CDBG funding assistance, the requirements of 24 CFR Part § 570.505 governing change of use and/or property disposition shall apply. Such a change in use may also require an amendment to this Agreement, including changes in Attachments B, D, E, and/or F.

Item 11. Real Property / Non-Real Property [Non-Expendable] Continued Use

The following standards shall apply to real property/non-real property (within the control of the Subrecipient) acquired or improved, in whole or in part, using CDBG funds. The standards are:

A. Change in Real Property Status:

1. Sale of Property:

The Subrecipient may sell the property acquired or improved with CDBG assistance at any time. If the Subrecipient sells the property or otherwise transfers ownership [title] to another entity that continues to use the property for an activity that meets a CDBG National Objective and is an eligible activity, the County will not require the Subrecipient to repay funds to the County's CDBG Program. If the Subrecipient sells the property or transfers ownership [title] to another entity that **does not continue** to use the property for an activity that meets a CDBG National Objective and is an eligible CDBG activity, the County will require the Subrecipient to repay to the County CDBG Program the fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of and improvements to the property. However, prior to such sale of CDBG-assisted property, the Subrecipient shall notify the County in writing of its intent to sell the property and shall determine the fair market value of the property by obtaining at least one review appraisal of the property performed by separate appraisers who are licensed by the State of Georgia.

If the Subrecipient sells or transfers the ownership [title] to the property at a point in time five [5] years after the County receives its last increment of CDBG funding, the County will not require the Subrecipient to reimburse the County's CDBG Program.

2. Change in Use of Property:

The Subrecipient may change the use of the property at any time provided it complies with the following stipulations:

(a) If the Subrecipient proposes to change the use of the property to an activity **that meets** a CDBG National Objective and is an eligible CDBG activity, the County will **not** require the Subrecipient to repay funds to the County's CDBG Program.

However, prior to such change in use the Subrecipient shall notify the County in writing of its intent to change the use of the property to permit the County to notify affected citizens with reasonable notice and opportunity to comment on the proposed change in use, as required by 24 CFR § 570.505.

(b) If the Subrecipient proposes to change the use of property to an activity that **does not meet** a CDBG National Objective or is not an eligible activity, the County will require the Subrecipient to reimburse the County's CDBG Program the fair market share of the property as adjusted for non-CDBG funds.

However, prior to such change in use, the Subrecipient shall notify the County in writing of its intent to change the use of the property and shall determine the fair market value of the property by obtaining at least one appraisal and at least one

review appraisal of the property performed by separate appraisers who are licensed by the State of Georgia.

- (c) If the Subrecipient proposes to change the use of the property at a point-in-time five [5] years after the County receives its last increment of CDBG funding, the County will not require the Subrecipient to reimburse the CDBG Program.

B. The Subrecipient shall inform the County, in writing, 30 calendar days prior to any modification or change in the use of real property from that specified in this Agreement, at the time of acquisition or improvements, including disposition.

C. Any Program Income generated from the disposition or transfer of property prior to or after the closeout, change of status or termination of the Subrecipient Agreement between the County and the Subrecipient shall be repaid to the County at the time of disposition or transfer of the property.

D. A lease Agreement, in a format prescribed by the County, must be executed between the County and the Subrecipient for any County CDBG-assisted Subrecipient activity which is to be carried out wholly, or in part, on County-owned real property. The lease Agreement shall be included in this Subrecipient Agreement as Attachment E. Said lease Agreement must contain, at a minimum, the following items and any other items determined by the County to be applicable to the specific lease:

1. The beginning and ending dates of the lease (at least 15 years to be eligible for CDBG funding assistance (applicable for new acquisition activities only).)
2. Identification of the parties to the lease, i.e., the Lessor shall be the County and the Lessee shall be the Subrecipient.
3. Identification of the precise land parcel(s) and/or structure(s) which constitute the subject of the lease.
4. Identification of the CDBG-eligible use of the real property(s) and/or structure(s).
5. A termination statement acceptable to the County and the U.S. Department of Housing and Urban Development.
6. The lease must contain a regulatory compliance statement indicating that the terms are in conformance with all applicable Federal, State, and Cobb County rules, regulations, and requirements.
7. The lease must contain a maintenance of property statement indicating that the property(s) and/or structure(s) which is the subject of the lease Agreement will be maintained in conformance with all applicable Federal, State, and Cobb County rules, regulations, and requirements.
8. The lease must contain a non-assignability clause indicating that the lease may not be assigned to any other party(s) without prior written approval by the County and subsequent execution of an amendment to the lease and to this Subrecipient Agreement.
9. The lease must contain an insurance certification statement indicating that the lessee will maintain appropriate types of insurance, as specified in the lease, on the property(s) and/or structure(s), which is the subject of the lease.
10. The lease must contain an indemnification statement, as specified by the County.
11. The lease must contain a statement as to governance, performance, and enforcement under the laws of the State of Georgia.
12. The lease may contain special conditions unique to the specific lessor/lessee circumstances and/or unique to the specific property(s) and/or structure(s).

- E. If the Subrecipient wishes to carry out its CDBG-assisted activity on real property(s) and/or in a structure(s) which is owned neither by the Subrecipient nor by the County, a long-term lease (minimum 15 years) must be executed which meets the standards specified above in Section A. However, prior to execution of said lease, the County must approve the form and content of the Lease Agreement to ensure its compliance with the terms of this Agreement.
- F. Private non-profit Subrecipient Organizations must also execute a real property use document(s) with the County, if required by the County. Such a document(s) provides the County with a mechanism to ensure its fiduciary interest in the property(s) and/or structure(s) for which the County provided CDBG funds to the private non-profit organization via this Agreement. In the event of the dissolution or change in status of the private non-profit organization or change in scope of the CDBG-assisted activity -- resulting in the CDBG-assisted activity becoming an ineligible CDBG activity, as defined by CDBG rules and regulations applicable at the time of such dissolution or change in status -- the County shall, at its option, exercise its right to obtain its appropriate share of the value of the CDBG-assisted property, as permitted by the rules and regulations governing the CDBG Program at the time of such an occurrence, and as specified by this Agreement. The real property use documents referenced, herein, shall be appended to this Agreement and shall constitute Attachment F.

Item 12. "Force Account" Work

The Subrecipient (limited to participating municipalities) may undertake public facility construction or renovation activities using municipal labor and equipment. Eligible costs of labor and equipment may be reimbursed by the County using CDBG funds, based upon submission of proper and acceptable invoice(s) and documentation of all costs - as prescribed by the County.

Item 13. Wage Rates

The CDBG Program Office shall be responsible for the preparation of all requests for wage rate determinations on CDBG activities, on behalf of the Subrecipient. The Subrecipient shall notify the CDBG Program Office prior to initiating any activity, including advertising for contractual services, which will include costs likely to be subject to the provisions of the Davis-Bacon Act and its implementing regulations. The CDBG Program Office will provide technical assistance to the Subrecipient to ensure compliance with these requirements.

Item 14. Contracting with Small or Minority/Women Owned Businesses

It is national policy that recipients take those steps necessary to ensure that minority business enterprises (MBE), women's business enterprises (WBE) and labor surplus area firms are used whenever possible. Thus, recipients are encouraged to adopt policies and procedures that will promote the use of small, minority, women-owned, labor surplus area and local businesses (hereafter referred to as "MBE/WBE firms") as sources for supplies, equipment, construction and professional services.

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The

Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Item 15. "Section 3" Clause

A. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR § 155, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's contractors and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

B. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 155 and will not let any subcontract

unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Item 16. Environmental Clearance

The CDBG Program Office shall be responsible for carrying out environmental reviews and clearances on all activities. The Subrecipient shall be responsible for providing necessary information, in a timely manner, to the County to accomplish this task.

Funding provided through this Agreement is "conditionally approved" subject to the completion of the Environmental Review process conducted by the CDBG Program Office. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CDBG Program Office of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to projects/activities included in this Agreement is conditioned on the County's determination to proceed with, modify, or cancel the projects/activities based on the results of a subsequent environmental review.

THE SUBRECIPIENT MAY NOT OBLIGATE OR EXPEND ANY FUNDS PROVIDED THROUGH THIS AGREEMENT UNTIL THE COUNTY PROVIDES TO THE SUBRECIPIENT A "NOTICE TO PROCEED," WHICH SHALL REPRESENT, IN PART, THE COMPLETION OF THE ENVIRONMENTAL REVIEW PROCESS, AND THE NOTICE FOR RELEASE OF FUNDS BY HUD FOR THE PROJECTS/ACTIVITIES IDENTIFIED IN THIS AGREEMENT.

Item 17. Technical Assistance

The County agrees to provide technical assistance to the Subrecipient in the form of oral and/or written guidance and on-site assistance regarding CDBG procedures and project management. This assistance will be provided as requested by the Subrecipient, and at other times, at the initiative of the County, or when the County provides new or updated CDBG Program information to the Subrecipient.

Item 18. Review Authority

The County shall have the authority to review all procedures and all materials, notices, documents, etc., prepared by the Subrecipient in implementation of this Agreement. The Subrecipient agrees to provide all information required by any person authorized by the County to request such information from the Subrecipient, for the purpose of reviewing the same.

Item 19. Agreement Amendment(s)

This Agreement may be modified or amended by mutual Agreement of the parties; however, no waiver, modification or amendment of any terms, conditions or provisions of this Agreement will be valid, or of any force or effect, unless made in writing, approved by the respective parties' governing bodies and properly executed by the authorized representatives of the parties. All amendments to this Agreement shall be made a part of the Agreement by inclusion in Attachment C, which will be attached at the time of any amendment(s). If the Subrecipient seeks an amendment to this Agreement, the request for such amendment shall be submitted in writing form to the Cobb County CDBG Program Office in a format prescribed by the CDBG Program Office. If an amendment to the Cobb County Consolidated Plan is required, the Subrecipient shall be informed of such requirement and the steps required to effectuate such a Consolidated Plan amendment.

Item 20. Effective Date and Termination Date

The effective date of this Agreement is the date specified on Page 4 of this Agreement. The termination date of this Agreement is December 31, 2026.

Item 21. Program Income

Subrecipients can generate program income from client fees charged to its program participants. If the Subrecipient generates any program income because of the expenditure of CDBG funds, the provisions of 24 CFR § 570.504(c) shall apply, as well as the following specific stipulations:

- A. The Subrecipient acknowledges, by executing this Agreement, the Subrecipient shall **report monthly all program income** (as defined at 24 CFR § 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. When CDBG program income is generated by an activity that is only partially assisted with CDBG funds (i.e., other funds were also used to carry out the project activity), the program income shall be prorated to reflect the percentage of CDBG funds used and deducted from the Subrecipient's monthly reimbursement request.
- B. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR § 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand.
- C. The Subrecipient further acknowledges, by executing this Agreement, that the County has the responsibility for monitoring and reporting to the U.S. Department of Housing and Urban Development (HUD) on the generation of any such program income. The Subrecipient acknowledges its responsibility for appropriate record keeping and reporting to the County on the generation and/or receipt of such program income.
- D. In the event of close-out or change in status of the Subrecipient, any program income that is on hand or received after the close-out or change in status shall be paid to the County within 30 calendar days of the official date of the close-out or change in status. The County agrees to notify the Subrecipient in writing, should closeout or change in status of the Subrecipient occur because of changes in CDBG Program statutes, regulations, and/or instructions.

CALCULATING THE PERCENTAGE OF CDBG INVESTMENT

Subrecipient's Operating Budget Divided by CDBG Grant Award Equals the Investment Percentage

EX: $\$318,222 \text{ (Op. Budget)} \div \$26,000 \text{ (Grant)} = 13\% \text{ (Investment)}$

CALCULATING CDBG EARNED INCOME

Monthly Income Earned from Client Fees Multiplied by the CDBG Investment Percentage Equals the Amount of CDBG Earned Income

EX: $\$4,784 \text{ (Fees)} \times 13\% \text{ (Investment)} = \$609.00 \text{ (CDBG Earned Income)}$

Note: The Subrecipient should calculate the CDBG earned income and deduct that amount from the monthly reimbursement request.

REPORTING EARNED INCOME

The Subrecipient should submit a monthly Profit/Loss Statement documenting earned income with monthly reimbursement request.

Item 22. Audits

The Subrecipient agrees to comply with the requirements of:

- A. The Office of Management and Budget (OMB) released new guidance on *Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. As described in 2 CFR §200.110 Effective/applicability date, this part supersedes the following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations contained in OMB Circulars A-21, A-50, A-87, A-89, A-102, A-110, A-122 and A-133.
- B. Subrecipients shall comply with the following audit requirements as listed in 2 CFR § 200.501.
- §200.501 Audit requirements.**
- (a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit, except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a Subrecipient, approves in advance a program-specific audit.
- (d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a Subrecipient, and a contractor. Federal awards expended as a recipient or a Subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit Subrecipient.* Since this part does not apply to for-profit Subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit Subrecipients. The Agreement with the for-profit Subrecipient must describe applicable compliance requirements and the for-profit Subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit Subrecipients may include pre-award audits, monitoring during the Agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

C. Cobb County audit standards:

Because Cobb County is responsible for any grant funds provided to all participating cities and other Subrecipients, any organization or city which expends a total of CDBG funds between \$0.00 and \$750,000.00 in any fiscal year from this agreement must have an audit of those funds performed annually, or shall follow procedures specified, herein, as if all funds were subject to the requirements below.

- 1) The Subrecipient shall have an annual audit conducted by a qualified auditor in keeping with the standards of OMB Circular 2 CFR § 200.501, Audits of States, Local Governments and Nonprofit Institutions, and a copy of the audit findings, or independent auditor's statement, shall be submitted to the Cobb County CDBG Program Office, ATTN: CDBG Coordinator, within 120 days of the end of the Subrecipient's fiscal year.
- 2) All requests to the County for CDBG reimbursements shall be approved by an individual at least one level above that person that prepares the reimbursement request. If the reimbursement request is prepared by the Chief Financial Administrator of the organization, the request shall be approved by the Executive Director or a member of the governing board.
- 3) Requests for reimbursement submitted to the County shall attach a copy of the appropriate invoice and canceled check for each expense for which reimbursement is being requested. If bank checks are not returned to the Subrecipient, a copy of the bank statement identifying the check may be substituted for the check.
- 4) Cobb County shall periodically perform program reviews of Subrecipient financial records, generally at least once during the period covered by this Agreement. This review will, at a minimum, include procedures to verify documentation of expenditures requested in one or more reimbursement requests.
- 5) Any appropriate corrective action for instances of noncompliance because of these program reviews has been taken within six (6) months of notification by Cobb County that these reportable conditions exist, and
- 6) If the Subrecipient receives only CDBG funds and no other Federal funds, and if the total CDBG funds received is less than \$26,000, the Subrecipient may indicate by checking and signing here that the Subrecipient is requesting authority from Cobb County to submit a separate schedule covering CDBG funds within the General Audit of the Subrecipient.
Subrecipient, herein, requests authority to submit separate CDBG schedule as a part of its General Audit:

The above procedures will provide the County's independent auditor with sufficient information to determine whether the Subrecipient has materially complied with the applicable laws and regulations, as they govern their programs. If any of the above procedures provide less information than is already required by this Agreement, then the applicable procedures already stated in the Agreement shall govern the Subrecipient's responsibilities to Cobb County.

The Subrecipient further agrees to send one copy of the independent auditor's report or its financial statements to the County within 120 days following the close of the Subrecipient's fiscal year.

Item 23. Performance

The Subrecipient, while utilizing these CDBG funds to increase capacity, services, or expansion of services for Low/Moderate Income households through those activities deemed eligible by HUD, will continue, on an on-going basis, to meet or exceed the performance goals as indicated in **Attachment B [Scope of Services]. Failure to maintain an adequate level of service or provide a quantifiable increase in services over the specified time period as defined by this Agreement shall make the Subrecipient subject to various disciplinary actions that include, but are not limited to, the following: suspension or probation of current grant activities; termination of current grant Agreement with CDBG funds being reimbursed to the County; and debarment from participating in future years CDBG application cycles until measurable improvement can be achieved and sustained.**

Item 24. Disputes, Default, and Termination

If the Subrecipient fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement (as amended), and more particularly if the entity refuses or fails to proceed with the work with such diligence as will ensure its completion within the time fixed by the schedule set forth in Item 2 of this Agreement, such a determination being made by the CDBG Program Office, the Subrecipient shall be in default and notice in writing shall be given to the entity of such default by the CDBG Program Office. If the entity fails to cure such default within such time as may be required by such notice, the CDBG Program Office may at its option terminate and cancel the contract. In the event of such termination, all grant funds awarded to the entity pursuant to this Agreement shall be immediately revoked and any approvals related to the projects described in this Agreement shall immediately be deemed revoked and canceled. In such event, the Subrecipient will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the grant funds will no longer be available for these projects. Such termination shall not affect or terminate any of the rights of the CDBG Program Office as against the entity then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the CDBG Program Office under the law and the note and mortgage (if in effect), including but not limited to compelling the entity to complete the project in accordance with the terms of this Agreement, in a court of equity.

Item 25. Suspension and Termination

In accordance with 2 CFR Part 200 Subpart D §338-339, Cobb County may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time,
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement,
3. Ineffective or improper use of funds provided under this Agreement, or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR Part 200 Subpart D §339, this Agreement may also be terminated for convenience by either Cobb County or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, and Cobb County determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the County may terminate the award in its entirety.

This Agreement may be terminated with or without cause by either party, hereto, by giving thirty (30) calendar days written notice of such termination. However, CDBG funds allocated to the Subrecipient under this Agreement may not be obligated or expended by the Subrecipient following such date of termination. Any funds allocated to the Subrecipient under this Agreement which remain unobligated or unspent upon such date of termination shall automatically revert to the County.

Item 26. Repayments

Any CDBG funds invested in activities that do not meet the applicable CDBG eligibility requirements, or in the event a project is deemed ineligible, or terminated before completion, either voluntarily or otherwise, all funds must be repaid to the Cobb County CDBG Program Office by the Subrecipient within 30 days of notification by the CDBG Program Office. If Cobb County is no longer a CDBG Program participating jurisdiction when the repayment is made, the funds must be remitted to HUD.

Item 27. Use of CDBG funds by Faith Based Organizations

A. ELIGIBLE & INELIGIBLE USES:

1. A Subrecipient organization **may not** use direct CDBG funds to support inherently religious activities, such as worship, religious instruction, or proselytization. If the participating organization engages in these activities, the activities must be offered separately, in time or location, from the programs or services directly funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded program or service.
2. Faith Based organizations may use space in their facilities to provide HUD funded services, without removing religious art, icons, sculptures, or other religious symbols. In addition, a faith-based organization may retain religious terms in its organizations name, select its board members on a religious basis, and include religious references in its organization mission statements and other governing documents.
3. Faith Based organizations that participate in a HUD sponsored program, **shall not**, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary based on religion, or religious belief.
4. Faith-Based organizations **cannot use** CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent those structures are used for inherently religious activities. **However, HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program.** In the event a structure is used for both eligible and inherent religious activities, HUD funds **may not exceed the cost of the portion of the acquisition, construction, or rehabilitation that are attributable to eligible activities.**

Item 28. Recognition of Cobb County Board of Commissioners and the CDBG Program Office

The Subrecipient shall ensure that the Cobb County CDBG Program Office, the Cobb County Board of Commissioners, the County Manager, and HUD are provided proper recognition for the following types of activities.

1. All CDBG Public Facilities and Capital Public Services Projects will affix proper signage in a prominent position inside/outside of its administrative offices and outside of all Project Sites which includes language recognizing the role the CDBG Program, the Cobb County Board of Commissioners, County Manager, and HUD have provided.
2. Provide the CDBG Program Office, the Cobb County Board of Commissioners, and the County Manager with adequate lead time to assist in the planning and implementation of any Groundbreakings, Dedication Ceremonies, and Special Events [i.e., Cobb County Celebration of National CD Week] in Projects funded in whole or in part with CDBG funds.
3. Copies of all reports, newspaper feature stories and articles, brochures, newsletters, advertisements, and other published materials shall contain statements which provide adequate recognition of the support provided by the CDBG Program Office, the Cobb County Board of Commissioners, the County Manager, and HUD in the funding assistance provided to the Subrecipient.
4. Attend and/or hold such meetings, hearings, and related gatherings as the CDBG Program Office, the Cobb County Board of Commissioners, the County Manager, and HUD require.

Item 29. Allowable Costs for Pre-Award

The CDBG/HOME Pre-Award process allows Subrecipients to incur costs prior to the receipt and execution of future years Subrecipient Agreements. The Subrecipient must "**front-end**" all costs related to the pre-award amount incurred for the activity mentioned herein this Agreement.

Cobb County will reimburse the Subrecipient annually upon allocation and receipt of the current year CDBG and/or HOME entitlement award. Please understand that Cobb County will reimburse the Subrecipient only if Congress continues to appropriate CDBG and/or HOME funds at the current funding levels and if the project continues to meet all CDBG and/or HOME requirements.

Item 30. Reimbursement Process

Cobb County utilizes a "reimbursement process" for all Subrecipients participating in the CDBG, HOME & ESG Programs. All Program funds will be paid by Cobb County to Subrecipients upon submission of acceptable payment documentation to the Cobb County CDBG Program Office by the Subrecipient in a timeframe required by the Cobb County CDBG Program Office. **Subrecipients cannot hold requests for reimbursement for more than two months.** Reimbursement payments by the CDBG Program Office will be made using the normal 30-day payment schedule for all Subrecipient disbursements.

In no case will Cobb County reimburse any portion of any cost determined to be ineligible under this Agreement or under CDBG regulations, regardless of any mistaken determination of eligibility at the time the costs were incurred, nor will Cobb County reimburse any cost which has been or will be reimbursed from another source.

The Cobb County CDBG Program Office may require the submission of Subrecipient's client files, via a desk audit, prior to approving any reimbursement request. Any findings of non-compliance identified during the desk audits may result in a delay in processing payments and/or may result in nonpayment of ineligible program expenses.

Submit Reimbursement requests to cdbgoofficepayments@cobbcounty.gov.

Item 31. Conflict of Interest

A conflict-of-interest situation is defined as one in which an employee, officer or agent or any member of his/her immediate family, or his/her partner or an organization that employs or intends to employ any of the aforementioned, has a financial or other interest in the selected contractor. A person who may potentially receive benefits from a CDBG/HOME assisted procurement activity shall not participate in the decision-making process. These provisions are effective for the length of their tenure and for one (1) year thereafter if they have exercised any functions or responsibilities with respect to the federally funded activity or are able to participate in the decision-making process or gain inside information related to such activity. Recipients must adopt guidelines to ensure that each procurement decision is free from actual, potential or an appearance of conflict of interest.

Per 2 CFR §200.318(c)(1), the guidelines must include a written code of standards of conduct which govern the performance of its officers, employees or agents who engage in the award and administration of contracts supported by federal funds. The following items must be included.

- No employee, officer or agent of the recipient shall participate in the selection, award or administration of a contract supported by federal funds if there is a real or an appearance of conflict of interest.
- The Subrecipient's officers, employees or agents may not solicit or accept gratuities, favors or items of monetary value from contractors, potential contractors or sub-recipients. However, a recipient may include additional guidance for situations when the financial interest is insubstantial, or an unsolicited gift is of nominal value.
- To the extent allowed by state or local laws and regulations, such standards of conduct shall provide for penalties, sanctions or disciplinary actions for violations.
- The Subrecipient may provide for additional prohibitions.

In addition to procurement and contracting, conflict of interest regulations covers other activities funded by CDBG:

- Acquisition and disposition of real property.
- Recipient or sub-recipient assistance to individuals, businesses or other private entities for rehabilitation, preservation or other improvements of private properties or facilities.
- Grants, loans or other assistance provided to businesses, individuals or other private entities such as neighborhood-based organizations, small business investment companies and local development corporations engaged in special economic development activities.
- These provisions apply to the following:
 - any person who is an employee, agent, consultant, officer, elected official or appointed official,
 - of the recipient,
 - any member of the above-mentioned parties' immediate family,
 - a partner of the above-mentioned parties.

Item 32. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

Item 33. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement,
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly.

Item 34. Insurance

Subrecipient shall furnish Cobb County insurance certificates from its workers compensation insurance carrier certifying that it carries such insurance and that the policy shall not be canceled, nor the coverage reduced thirty (30) days' notice thereof has been given in writing to the Cobb County CDBG Program Office at the address specified in this Agreement.

Subrecipient shall obtain, at its sole cost, a comprehensive general liability and auto insurance policy or policies insuring against liability for all claims and suits for damage or injuries to persons or property resulting from or arising out of operations of Subrecipient, its officers, agents, or employees. Said policy or policies of insurance shall provide coverage for both bodily injury and property damages in not less than the following minimum amounts: One Million Dollars (\$1,000,000) combined single limit or its equivalent. Said policy or policies shall also contain a provision that no termination, cancellation or change of coverage of any insured or additionally insured shall be effective until thirty (30) days' notice thereof has been given in writing to the Cobb County CDBG Program Office at the address specified in this Agreement, and maintain for the period covered by this Agreement, a policy or policies of general liability insurance or certificate of such insurance, satisfactory to the County naming Cobb County as an additional insured.

Subrecipient shall give the County prompt and timely notice of any claim made or suit instituted. Subrecipient shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance, which in its own judgement may be necessary for its proper protection in the prosecution of the work.

Item 35. Registration

Subrecipient agrees to maintain a current registration in the federal System Award Management ("SAM") database (<http://www.sam.gov>) pursuant to the Federal Funding Accountability and Transparency Act, P.L. 109-282, as amended by section 6202(a) of P.L. 110-262. If Subrecipient is not currently registered, it must do so within ten (10) days of the date Subrecipient executes this Agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is required for registration. Subrecipient shall also provide proof of registration within fourteen (14) days of the Effective Date.

Item 36. BUILD AMERICA, BUY AMERICAN (BABA) - Construction Materials (FAR 52.226-9) (November 15, 2021)

The Build America, Buy America Act (BABA) was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 7090152 of Pub. L. No. 117-58. In addition to providing funding for roads, bridges, rails, and high-speed internet access, it created an incentive to increase domestic manufacturing across the country through the inclusion of BABA's "Buy America Preference" (BAP). In general, the BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance (FFA), as outlined in Section 70914(a) of BABA, must be produced in the United States. The BABA preference for American materials and products applies to all spending on infrastructure projects by Federal agencies, including HUD.

(a) Definitions. As used in this clause—

Commercially available off-the-shelf (COTS) item—

Covered Materials includes the following when used in connection with an Infrastructure Project: (A) all iron and steel; (B) all Manufactured Products; and (C) all Construction Materials.

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at Federal Acquisition Regulation (FAR) 2.101),
- (ii) Sold in substantial quantities in the commercial marketplace, and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

(2) Infrastructure is described in 2 CFR 184.4(c) and encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).

(3) Infrastructure Project. The term "infrastructure project" is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

(4) Iron and Steel Products. The term "iron and steel products" is defined in 2 CFR 184.3 and means an article, material, or supply that consists wholly or predominantly of iron or steel, or a combination of both.

(5) Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

(6) Made in America Office. The term "Made in America Office" or "MIAO" means the office at the Office of Management and Budget, established by section 70923 of BABA, that is charged with, among other things, enforcing compliance with the BAP and establishing the procedures to review waiver requests proposed by a Federal awarding agency.

(7) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(8) "Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item

brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

(9) Cost of components means:

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether such costs are paid to a domestic firm), and any applicable duty (whether a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

(10) Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States, or

(ii) A construction material manufactured in the United States, if:

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign, or

(B) The construction material is a COTS item, or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the

manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent.

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest, or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including:

(A) A description of the foreign and domestic construction materials,

(B) Unit of measure,

(C) Quantity,

(D) Price,

(E) Time of delivery or availability,

(F) Location of the construction project,

(G) Name and address of the proposed supplier, and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not decide.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

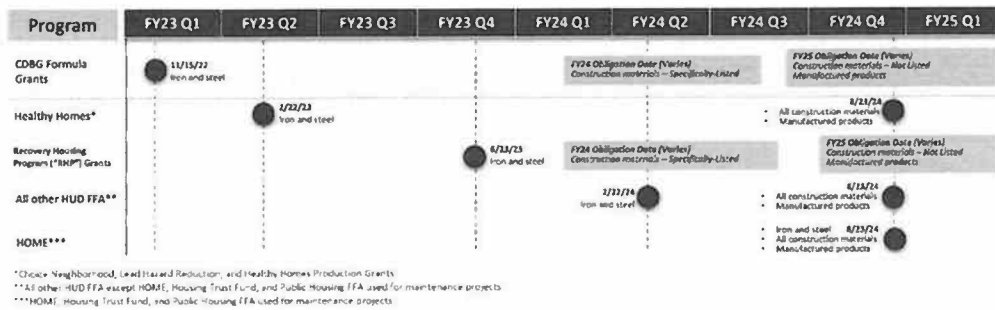
(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

Not Listed Construction Materials. The term “not listed construction materials” refers to the category of construction materials that are subject to the BAP, but not included in HUD’s specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:

- i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube,
- ii. glass (including optic glass), and
- iii. drywall.

HUD’s Phased Implementation Schedule

While BABA became effective on May 14, 2022, HUD has published a series of waivers to allow for a phasing-in of the BAP with respect to HUD’s FFA programs. Specifically, HUD has waived application of the BAP until the below effective dates depending on the program and the product listed in HUD’s Phased Implementation Waiver. Please refer to HUD’s Phased Implementation Schedule below. For Tribal Entities receiving FFA from HUD, HUD has waived the application of the BAP through May 22, 2023.



(End of Clause)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereunto have affixed their signatures on the dates specified below:

For City of Kennesaw:

For Cobb County:

Signature of Authorized Person

Lisa Cupid, Chairwoman
Cobb County Board of Commissioners

Typed or printed name and title

Date of Signature

Date of Signature

Attest: _____
Signature

Attest: _____
County Clerk's Office

Typed or printed name and title

Date of Signature

Date of Signature

Rabihah Walker-Towers, Managing Director
Cobb County CDBG Program Office

Date Approved by Subrecipient Governing
Body: _____

Date of Signature

Imprint Subrecipient Corporate Seal Here:

Board Action Date: _____

Approved as to Form:

Cobb County Attorney's Office

See Also Attachments

ATTACHMENT A
COMMUNITY DEVELOPMENT BLOCK GRANT
GRANTEE CERTIFICATIONS

In accordance with the Housing and Community Development Act of 1974, as amended, ("the Act") and with 24 CFR §570 of the Community Development Block Grant regulations, the Subrecipient certifies that:

- (a) It possesses legal authority to accept and execute a Community Development Block Grant award from Cobb County,
- (b) Its governing body has duly adopted or passed, by at least a majority vote, as an official act a resolution, motion or similar action authorizing the acceptance of this grant for the purposes specified in this Agreement and directing and authorizing its appropriate personnel to execute and implement this Agreement and to provide to the County such additional information as may be required,
- (c) Provides for and encourages citizen participation, with particular emphasis on participation by persons of low-and-moderate income who are residents of slum and blighted areas and of areas in which funds are proposed to be used and provides for participation of residents in low- and moderate-income neighborhoods, as defined by the County,
- (d) Provides citizens with reasonable and timely access to local meetings, information, and records relating to the Subrecipient's use of funds, as specified in this Agreement,
- (e) Provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for persons with disabilities,
- (f) Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate,
- (g) The grant will be conducted and administered in compliance with:
 - 1. Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. Sec. 2000d et seq.), and
 - 2. The Fair Housing Act (42 U.S.C. 3601-20),
- (h) It will affirmatively further fair housing,
- (i) It will carry out the activities specified in this Agreement consistent with the goals, objectives, and strategies of the Cobb County Consolidated Plan,
- (j) It will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under section 106 of the Act or with amounts resulting from a guarantee under section 108 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
 - 1. Funds received under section 106 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act, or
 - 2. For purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 106 of the Act to comply with the requirements of subparagraph (1) above.
- (k) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with 24 CFR §570.608,
- (l) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as required under 24 CFR §570.606,
- (m) It has adopted and is enforcing:
 - 1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations, and
 - 2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.
- (n) To the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement,
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and
 3. It will require that the language of paragraph (n) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly
- (o) It will or will continue to provide a drug-free workplace by:
1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition
 2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The grantee's policy of maintaining a drug-free workplace,
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs, and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph.
 4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:
 - (a) Abide by the terms of the statement, and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
 5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency
 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.
 8. The site(s) for the performance of work done in connection with the specific grant:

Place of Performance: **Location TBD**

It will comply with the other provisions of the Act and with other applicable laws.

Signature - Subrecipient Chief Elected Official or Board Chair

Typed Name - Subrecipient Chief Elected Official or Board Chair

Title

Signature Date

ATTEST:

Signature of Person Attesting Signature by Subrecipient's Chief Elected Official or Board Chair

Name - Person Attesting Signature by Subrecipient's Chief Elected Official or Board Chair

Title - Person Attesting Signature by Subrecipient's Chief Elected Official or Board Chair

Date of Attesting Person's Signature

**INSTRUCTIONS CONCERNING LOBBYING, DRUG-FREE WORKPLACE, AND
DEBARMENT AND SUSPENSION REQUIREMENTS:**

A. Lobbying Certification - Paragraph n

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by section 1552, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Drug-Free Workplace Certification - Paragraph o

1. By signing and executing this Agreement, the Subrecipient is providing the certification set out in paragraph (o).
2. The certification set out in paragraph (o) is a material representation of fact upon which reliance is placed when the County awards the grant. If it is later determined that the Subrecipient knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may act authorized under the Drug-Free Workplace Act OF 1988 [42 USC 701], as set forth at 24 CFR Part 21.
3. Workplaces under this Agreement shall be identified in this Agreement. Failure to identify all known workplaces constitutes a violation of the Subrecipient's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place.
5. If the workplace identified to the County changes during the performance of the grant, the Subrecipient shall inform the County of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. Definitions of terms in the Drug-Free Workplace common rule apply to this certification. Subrecipient's attention is called, in particular, to the following definitions from these rules:
 - "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C.812) and as further defined by regulation (21 CFR § 1508.11 through 1508.15).
 - "Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
 - "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;].
 - "Employee" means the employee of a Subrecipient directly engaged in the performance of work under a grant provided through this Agreement, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are not on the Subrecipient's payroll. This definition does not include workers not on the payroll of the Subrecipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the Subrecipient's payroll; or employees of Subrecipients or subcontractors in covered workplaces).
7. Subrecipients shall comply with the government-wide non-procurement debarment and suspension requirements in 2 CFR Part 2424. These government-wide requirements restrict subcontractors and contractors with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance program or activities.

ATTACHMENT B
SUBRECIPIENT'S SCOPE OF SERVICES AND BUDGET

The following activities and/or projects shall be carried out by the Subrecipient, under the terms of this Agreement and its accompanying certifications and reporting requirements:

Agency: **CITY OF KENNESAW**

<u>Activity Name(s):</u>	<u>Activity Number:</u>	<u>Amount:</u>
Infrastructure Improvements	CD26-C26C3-F	\$113,322.00

The total PY 2026 CDBG budget for this activity shall not exceed a total of **\$113,322.00**. The Agreement shall be effective on the date specified on Page 4 of this Agreement and terminate on December 31, 2026, unless extended by the CDBG Program Office. The activity shall be completed by December 31, 2026. After that date, Cobb County reserves the right to recapture the funds for use on other eligible projects. Reporting requirements shall continue until December 31, 2031.

Scope of Work: The City's Infrastructure Improvement Project will be determined after the Program Year starts.

GENERAL REQUIREMENTS:

Budget Modifications

Subject to written approval from the CDBG Program Office, Subrecipients may transfer funds between approved budget line items during the grant year. However, the CDBG Program Office will only accept budget modification requests once a quarter for each Subrecipient, ***for a maximum of four (4) requests per program year.***

ASX

Activity Delivery Costs/Direct Costs

Activity Delivery Costs/ Direct costs - are those costs that can be directly assigned to eligible CDBG activities under the funded program relatively easily with a high degree of accuracy. These costs are allowable costs incurred for implementing and carrying out eligible CDBG activities. The activity delivery costs cover the costs of staff directly carrying out the activity in addition to equipment and supplies that are necessary for successful completion of the activity. Activity delivery costs must be allocable to a CDBG-assisted activity or an activity that is CDBG-eligible, meet a national objective, and meet all other CDBG program requirements at 24 CFR § 570.

This standard applies equally to such items as salaries and administrative services contracts, as well as to real property and equipment purchases or leases, travel, and other administrative expenditures. If the Subrecipient submits monthly reports to the CDBG Program Office that reflect no CDBG-eligible service activity has been undertaken, then the Subrecipient will not be reimbursed for direct costs.

Reporting Requirements

Monthly Services Reports [see the form which follows] shall be filed with the Cobb County CDBG Program Office beginning with the 1st date of operation of the vehicle and/or the activity(s) and shall be submitted for a total of 5 years, following the initial month of operation.

Special Stipulations for Non-Real Property Acquisitions

The Subrecipient shall file the Non-Real Property Inventory Form for non-real property with the Cobb County CDBG Program, upon completion of the purchase of each item. The form shall be filed by January 15 of each year, thereafter, for as long as the property shall remain in use as a CDBG-assisted activity.

CDBG BUDGET

<i>PROJECT BUDGET</i>	ORIGINAL BUDGET	LINE-ITEM REVISION	REVISED BUDGET
I. Personnel			
Salaries and Wages			
Fringe Benefits			
Consultants and Contract Services			
SUBTOTAL			
II. Non-Personnel			
Space Costs			
Rental, Lease, or Purchase of Equipment			
Travel			
Other Costs			
SUBTOTAL			
III. Architectural/ Engineering Design			
IV. Acquisition of Real Property			
V. Construction/ Rehabilitation			
VI. Other (Explain)			
TOTAL COSTS			

ATTACHMENT C

AGREEMENT AMENDMENTS

[Add Amendments If Applicable]

ATTACHMENT D

LEASE AGREEMENT

[Add If Applicable]

ATTACHMENT E

PROPERTY USE REQUIREMENTS

[Add If Applicable]

ATTACHMENT F

HUD REGULATIONS

HUD REGULATIONS CAN BE FOUND AT THE FOLLOWING LINKS:

- [24 CFR PART 570](#)
- [PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS](#)
- [GUIDE TO NATIONAL OBJECTIVES AND ELIGIBLE ACTIVITIES FOR CDBG ENTITLEMENT COMMUNITIES](#)
- [CPD INCOME ELIGIBILITY CALCULATOR AND INCOME LIMITS](#)
- [CHAPTER 5: RECORDKEEPING AND REPORTING](#)
- [ATTACHMENT 5-1: INCOME INCLUSIONS AND EXCLUSIONS – HUD](#)

ATTACHMENT G
INCOME INCLUSIONS/EXCLUSIONS

Exhibit 5-1

4350.3 REV-1

Exhibit 5-1: Income Inclusions and Exclusions
24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

Income Inclusions

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services,
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family,
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD,
- (4) The full number of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph,
- (5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions,
- (6) Welfare Assistance.
 - (a) Welfare assistance received by the family,
 - (b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- (c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus,
- (d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling, and
- (8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.
- (9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income.
*(Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)

INCOME EXCLUSIONS:

- (1) Income from employment of children (including foster children) under the age of 18 years,
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone),
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions,
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member,
- (5) Income of a live-in aide, as defined in 24 CFR 5.403,
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance),
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm),
- (8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3).

- (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS),
 - (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program,
 - (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period, or
 - (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts),
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era),
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse),
- (12) Adoption assistance payments in excess of \$480 per adopted child,
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts,
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit,
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home, or
- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

The following is a list of income sources that qualify for that exclusion:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]),
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions),
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e),
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]),
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]; (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, AmeriCorps),
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L-94-540, 90 Stat. 2503-04),
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408),
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu),
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program,
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.),
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721),
- (m) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q),
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]),
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433),
- (p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]),

- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805),
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602), and
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

ATTACHMENT H

CDBG APPLICATION

Agency's Application for 2026 CDBG Funding

Agency's application for funding on file at the Cobb County CDBG Program Office

ATTACHMENT I
REQUIRED SUBRECIPIENT FORMS

- Client File Checklist-Public Services
- Consent And Authorization to Disclose Information
- CDBG Monthly Expenditure Report
- CDBG Monthly Services Report
- Environmental Review Request Form
- Disclosure Of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
- VAWA Lease Addendum
- Income Calculation Form
- Self-Declaration of Income
- Declaration of Zero Income
- Self-Employment Certification
- Non-Real Property Inventory
- Documents Required for Reimbursement
- Reimbursement Cross Check Form
- Budget Revision Request Form

Electronic copies have been provided to all Subrecipient agencies. The forms can be downloaded from the Cobb County CDBG Program Office online box at <https://app.box.com/s/pmcme6hjk5dk9l8bnpnqhsvezabz36x>

ATTACHMENT J
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

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

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

AGENCY'S ORGANIZATION: _____

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

FIRST NAME: _____ LAST NAME: _____

TITLE: _____

SIGNATURE: _____ DATE: _____

ATTACHMENT K
DEBARMENT/SUSPENSION CERTIFICATION

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions
Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12649. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
10. Certification Regarding Debarment, Suspension, Ineligibility a Voluntary Exclusion--Lower Tier Covered Transactions
11. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
12. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ATTACHMENT L
SECURITY AND IMMIGRATION COMPLIANCE AFFIDAVIT
Contractor/subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)

By executing this affidavit, the undersigned contractor or subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for (name of contractor or subcontractor with whom such contractor or subcontractor has privity of contract) and (name of contractor) on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned will continue to use the federal work authorization program throughout the contract period and the undersigned contractor or subcontractor will contract for the physical performance of services in satisfaction of such contract only with contractor or subcontractor who present an affidavit to the contractor or subcontractor with the information required by O.C.G.A. § 13-10-91(b).

The undersigned contractor or subcontractor shall submit, at the time of such contract, this affidavit to (name of contractor or subcontractor with whom such contractor or subcontractor has privity of contract). Additionally, the undersigned contractor or subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to (name of contractor or subcontractor with whom such sub-subcontractor has privity of contract). contractor or subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor or Subcontractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 202__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____, 202__.

NOTARY PUBLIC

My Commission Expires: _____

ATTACHMENT M
GENERAL ASSURANCES

The Contractor and Subrecipient shall comply with the following requirements:

I. IMMIGRATION COMPLIANCE

(a) **INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.**

The Owner acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, *et seq.*, and regulations relating thereto. Failure to comply with the above provisions of this Agreement shall be considered a material breach and shall be grounds for immediate termination of the Agreement.

(b) **GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT OF 2006.**

The Owner acknowledges that it is responsible for complying with the provisions of the Georgia Security and Immigration Compliance Act of 2006 located at O.C.G.A. §13-10-90 *et seq.* and Georgia Department of Labor Rule 300-10-1-.02.

- A. That affidavits in the required form be executed from the Owner (and any subcontractors, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of any Owner contract and/or subcontract,
 - B. That the Owner (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the "Immigration Compliance Certification" and that such certification be received by the County prior to the commencement of any work under this Agreement or subcontract which is to be paid for with County funds,
 - C. That the Owner (or any subcontractor, regardless of tier) notify the County within five (5) business days of entering into a contract or other Agreement for hire with any subcontractor(s), regardless of tier to be paid for with County funds,
 - D. That the Owner be responsible for obtaining and providing to the County the "Subcontractor Affidavit & Agreement" and "Immigration Compliance Certification" required under the County "Procedures & Requirements" from each subcontractor, regardless of tier, employed or retained for work under this Agreement prior to the commencement of any work under the contract or any subcontract,
 - E. That County reserves the right to dismiss, or require the dismissal of, any consultant or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. §13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s),
 - F. That Owner and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of Cobb County for immigration compliance and further provide notice that the County reserves the right to require the Owner to dismiss, or require the dismissal of, any consultant or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s),
 - G. That failure to comply with any of the requirements and procedures of the County (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by County or State officials upon request; and/or failure to continue to meet any of the statutory or County obligations during the life of the Agreement) shall constitute a material breach of the Agreement and shall entitle the County to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements or entitle the County to terminate this Agreement,
 - H. That upon notice of a material breach of these provisions, the Owner (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the Agreement, the requirement that a subcontractor be dismissed from performing work under the contract, and all damages permissible by law.
- (c) S.A.V.E VERIFICATION O.C.G.A. § 50-36-1 *et seq.*

The Owner acknowledges and agrees as an applicant for a public benefit, as referenced in O.C.G.A. § 50-36-1, from Cobb County that the Owner shall comply with all requirements, including but not limited to, executing a S.A.V.E. affidavit with respect to this Agreement.

Signature - Subrecipient

Typed Name - Subrecipient

Title

Signature Date

ATTACHMENT N

PERSONALLY IDENTIFIABLE INFORMATION (PII) CONTRACTOR ACKNOWLEDGMENT AND AGREEMENT

Definitions of Personally Identifiable Information (PII) and Sensitive PII

Personally identifiable information (PII) is any information that permits the identity of an individual to be directly or indirectly inferred, including any information which is linked or linkable to that individual regardless of whether the individual is a U.S. citizen, lawful permanent resident, visitor to the U.S., or employee or contractor for the Subrecipient.

Sensitive PII is PII, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

Acknowledgment And Agreement

I attest that I understand my responsibility to safeguard PII, including Sensitive PII; and, that I am familiar with and agree to comply with the standards for handling and protecting PII. I also agree to report the potential loss, theft, improper disclosure or compromise of PII. I acknowledge that I have received proper training regarding the procedures for safeguarding PII, and that I am aware of protocols should PII be potentially lost, stolen, improperly disclosed or compromised.

I further understand that my failure to act in accordance with my responsibilities outlined above may result in removal of system access, reassignment to other duties, criminal or civil prosecution, or termination if I am found responsible for an incident involving the loss, theft, unauthorized or improper disclosure or compromise of PII or Sensitive PII.

Organization: _____

Executive Director Signature: _____

Print Name: _____

Date: _____

ATTACHMENT O
Conflict of Interest Policy and Certification

The Subrecipient and the County certify that the provisions of the Official Code of Georgia Annotated, 45-10-20 through 45-10-28, as amended. The Subrecipient shall file with the County the signed Conflict of Interest Policy.

Non-Competitive Activity:

No person who is an employee, agent, consultant, and officer, elected or appointed official of a Subrecipient who receives CSBG funds should engage in any activities that are or may be perceived as non-competitive, including but not limited to the following activities:

- Agreeing with a competitor to share market segments or regions; to set prices or terms of a sale; or to boycott a third party,
- Discussing production quantity with a competitor,
- Making false or misleading statements about a competitor's products or services.

No person who is an employee, agent, consultant, officer, elected or appointed official of a Subrecipient who receives CSBG funds should engage in any activities that interfere or may be perceived as interfering with an existing contract or project between a customer (or potential customer) and a competitor.

Examples of such activities include, but are not limited to, making disparaging remarks to the customer about the competitor's performance for the customer with the intention of inducing the customer to terminate its contract with the competitor in favor of the company.

Political Contributions:

Employees, agents, consultants, officers, elected or appointed officials of a Subrecipient may not use company assets or CSBG funds to make political contributions to candidates running for a political office (i.e., in a federal, state or local election). Examples of prohibited contributions may include, but are not limited to cash, gifts, loans, tickets, or trips.

Conflict of Interest:

The Subrecipient agrees to abide by the following provisions:

No covered persons who exercise or have exercised any functions or responsibilities with respect to CSBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or Agreement with respect to the CSBG-assisted activity, or with respect to the proceeds from the CSBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

Confidential Information:

Employees, agents, consultants, officers, elected or appointed officials of a Subrecipient may not disclose to a third party the confidential information of the company or the company's customers. Such information may include, but is not limited to, company procedures, processes, financial information, business plans and customer lists.

Violation of Policy:

Employees, agents, consultants, officers, elected or appointed officials of a Subrecipient who violate this policy will be subject to discipline that may include suspension or termination and loss of CSBG funds.

Employees etc. who become aware of any apparent violations of this policy should notify their department managers, who in turn, should notify the CSBG Program Office.

CONFLICT OF INTEREST CERTIFICATION

TO BE COMPLETED BY THE SUBRECIPIENT:

The _____ certifies that we have read and disseminated the CSBG Conflict of Interest Policy. In addition, we hereby certify the following (check one):

To the best of our knowledge and belief, we do not presently have any conflicts of interest that might interfere with any CSBG assisted activity.

We have an actual or potential conflict of interest and have described the parties, activities, and/or situation to the best of my ability below:

EXPLANATION:

Signature: _____ Title: _____

(Subrecipient Executive Director or Board Chair)

Date: _____



Item Report

TO: The Honorable Mayor and City Council

FROM: Bill McNair, Parks & Recreation Director

DATE: February 23, 2026

TITLE: **Resolution: All-Star Lighting and Electrical Services Proposal**
 Consideration for approval of a Resolution accepting the proposal from All-Star Lighting and Electrical Services, Inc. to install poles and upgrade lighting for baseball fields 5 and 6 at Adams Park.

Summary:

The scope of work includes the replacement of one (1) pole at Field 5, the addition of two (2) poles at Field 5, and upgrading all lights to LED at Fields 5 and 6. The project is funded through impact fees.

Recommendation:

The Parks and Recreation Director recommends approval.

Fiscal Impact:

Impact Fees: 276-4225-54-145000-00000

Attachments:

1. RES 2026 Baseball field light poles
2. All Star Lighting Estimate

**CITY OF
KENNESAW
GEORGIA**

RESOLUTION NO. 2026-___,

**RESOLUTION TO APPROVE THE PROPOSAL PRESENTED BY ALLSTAR
LIGHTING & ELECTRICAL SERVICES, INC. FOR THE INSTALLATION OF
POLES AND UPGRADE OF LIGHTS AT BASEBALL FIELDS 5 AND 6 AT
ADAMS PARK.**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, the light fixtures at Fields 5 and 6 at Adams Park need an upgrade; and

WHEREAS, the proposed scope of work to accomplish these upgrades includes the replacement of one (1) pole at Field 5, the addition of two (2) poles at Field 5, and upgrading all lights to LED at Field 5 and Field 6; and

WHEREAS, Allstar Lighting & Electrical Services, Inc. has proposed a cost estimate of \$232,940.87, based on current Cobb County Contract pricing; and

WHEREAS, the cost to replace the lights and poles at Adams Park will be paid from Impact Fees.

NOW, THEREFORE, BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to approve the proposal presented by Allstar Lighting and Electrical Services, Inc. for the upgrade of lights and poles for Fields 5 and 6 at Adams Park.

PASSED AND ADOPTED by the Kennesaw City Council on this ___ day of March, 2026.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

Allstar Lighting & Electrical Services, Inc
 361 Reynolds Rd
 Hiram, GA 30141 US
 invoice@allstar-light.com

Estimate 1397



ADDRESS	SHIP TO	DATE	TOTAL
City of Kennesaw 2529 J O Stephenson Ave, NW Kennesaw, GA 30144	Adams Park Fields 5 & 6	02/03/2026	\$232,940.87

SALESMAN
JO

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
		Field 5 change out bad pole on 1st base side, Add 2 concrete poles in outfield remove existing lights and replace with LED			
	96879-c008 Electrician	96879-c008 Electrician	336	48.00	16,128.00
	96879-c007 Electrician With Bucket Truck/Auger	96879-c007 Electrician With Bucket Truck/Auger	120	75.00	9,000.00
	96879-C137 Electrician to Line Locate with Dynatel	96879-C137 Electrician to Line Locate with Dynatel	4	53.00	212.00
	96879-c014 Material	96879-c014 Material	1	207,600.87	207,600.87

Please find attached your latest job quote. This is not an invoice. Thank You for your repeat business. If there are any questions you may have please don't hesitate to contact us at 770-439-0844.

SUBTOTAL	232,940.87
TAX	0.00
TOTAL	\$232,940.87

THANK YOU.

We appreciate and value your support.

AllStar Lighting and Electrical
 361 Reynolds Road

Hiram, Ga. 30141
770-439-0844

Accepted By

Accepted Date



Item Report

TO: The Honorable Mayor and City Council
FROM: Elizabeth Weaver, Parks & Recreation Assistant Director
DATE: February 23, 2026
TITLE: **Resolution: 2026 Athletic Association Facility Use Agreement**
Consideration for approval of a Resolution renewing the 2026 Athletic Association Facility Use Agreement with the Kennesaw Baseball and Softball Association.

Summary:

The Kennesaw Baseball and Softball Association (KBSA) renews this agreement in March of each year.

Recommendation:

The Parks and Recreation Director recommends approval of the contract with KBSA.

Fiscal Impact:

Attachments:

1. RES- 2026 KBSA Agreement
2. KBSA Agreement- Updated 2026

**CITY OF
KENNESAW
GEORGIA**

RESOLUTION NO. 2026 __

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE ATHLETIC
ASSOCIATION FACILITY USE AGREEMENT WITH KENNESAW
BASEBALL AND SOFTBALL ASSOCIATION.**

WHEREAS, the City recognizes that youth sports benefits the children, youth, and adults of the City and surrounding community; and

WHEREAS, volunteer sports associations provide the city and community with a variety of youth sports including baseball and softball; and

WHEREAS, the City desires to renew the agreement with the Kennesaw Baseball and Softball Association for the purpose of providing these services.

NOW, THEREFORE, BE IT RESOLVED the City Council hereby authorizes the Mayor to execute the Athletic Association Facility Use Agreement renewing the agreement with Kennesaw Baseball and Softball Association for an additional one (1) year term.

PASSED AND ADOPTED by the Kennesaw City Council on this__day of March 2026.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW ATHLETIC ASSOCIATION FACILITY USE AGREEMENT

This Facility Use Agreement (the “Agreement”) is made this _____ day of February 2026 (the “Effective Date”) by and between the City of Kennesaw, Georgia (“City”) and Kennesaw Baseball & Softball Association, a Georgia-incorporated tax-exempt non-profit organization (“Association”).

1. Term & Renewal

- This Agreement is effective for the 2026 calendar year, terminating on December 31, 2026.
- Renewal shall be recommended by the Parks and Recreation Department Director to the Mayor and City Council prior to expiration.

2. Financial Responsibilities

- The Association shall collect non-resident fees at registration and submit payment, with supporting documentation, to the assigned City liaison within two (2) weeks of the first scheduled game or event. Supporting documentation includes participant rosters and itemized revenue lists.
- Facility and service fees are due within two (2) weeks of the first scheduled game or event.
- All registration fees must be reviewed and approved by the Parks and Recreation Director prior to the start of each season.
- The Association shall submit an annual Financial Review or Compilation of Financial Records by a CPA within thirty (30) days of tax filing.
- Seasonal budgets must be submitted prior to the season, and a year-end balance sheet with annual financials shall be submitted for review.

3. Administrative Documents & Reporting

- The Association shall submit a current list of officers and contact information with this Agreement.

- Board meeting schedules must be provided at the start of the calendar year. Any changes must be submitted at least seven (7) days before each meeting.
- Current by-laws shall be submitted annually before each season.
- Proof of bonded officers handling money shall be submitted annually after Agreement renewal.
- Background checks for all coaches, team parents, and volunteers must be completed annually before working with minors, and eligible volunteer cards shall be issued through the City.

4. Facility Use & Scheduling

- The Association shall submit all league practice, workout, game, and tournament schedules for approval no later than two (2) weeks prior to the scheduled activity. Notifications of make-up games must be received by 10:00 a.m. on the day of the game.
- The Association shall submit all all-star and travel team practice schedules for approval no later than two (2) weeks prior to the scheduled activity.
- The City will provide blackout dates during which the Association may not use Adams Park facilities unless otherwise approved.
- The Association is permitted to host a maximum of two (2) external tournaments annually, provided that all proceeds directly benefit the Association. All tournament dates are subject to City approval and must be submitted at least two (2) weeks prior to the event. City staff will not be available for field preparation.
- Use of lighted fields by post-season, travel, or All-Star teams must be approved by the assigned liaison.
- Unscheduled field time may be allocated to other City programs or associations.
- The City reserves the right to preempt facility use for special events, with thirty (30) days' notice when possible.

5. Facility Maintenance & Responsibilities

- The City will prepare fields for practices and league games. If make-up game notification is received after 10 a.m., the Association is responsible for field preparation.
- On City holidays, City staff will not be available for field preparation.
- The City is responsible for maintaining vertical netting, batting cages, backstop pads, windscreens, fence toppers, and related equipment.
- Alterations to City property require prior approval.

- The City will maintain field lighting, scoreboards, restrooms, bases, infield mix, drainage, mowing, and general field conditions.
- The Association shall store its equipment properly and maintain concession equipment; major repairs and HVAC, lighting, and grease traps are maintained by the City.
- The Association, its officers, coaches, volunteers, and members are not permitted to use City-owned equipment for field maintenance or any other purpose. This includes, but is not limited to, mowers, drags, tractors, tools, utility vehicles, and maintenance supplies. All field maintenance and related work requiring City equipment shall be performed exclusively by City staff, unless prior written authorization is granted by the City. Unauthorized use of City equipment may result in corrective action, suspension of privileges, or other remedies as determined by the City.
- All Association property must be removed from Adams Park facilities at the conclusion of each season. The City will allow the Association to store spirit wear on-site, provided it is neatly and properly stored. All food items must be removed at the end of each season.

6. Supervision & Conduct

- At least one board member must be present during scheduled activities to ensure proper supervision until all participants have left.
- The Association is responsible for cleanliness around fields and concession stands.
- The City may inspect facilities at any time to ensure compliance.

7. Liability & Indemnification

- The Association shall maintain a minimum of \$1,000,000 general liability insurance, naming the City as an additional insured, and provide proof of coverage before the season starts.
- The Association shall indemnify the City against any claims arising from its activities under this Agreement.
- The City reserves the right to cancel activities if field conditions pose safety risks.

8. Communication & Promotion

- All concerns, requests, schedules, or other pertinent information shall be communicated via email between the Association's President and City staff.

- The Association will be included in Citywide marketing and communications.
- The City shall provide a meeting room for the Association's board meetings on the first Tuesday of each month from 6:30 PM to 8:30 PM at an indoor facility.

9. Concessions

- The Association is responsible for operating the concession stand for all Association-run games/events in accordance with City guidelines.
- The City retains the right of first refusal regarding concession operators.

10. Termination

- Either party may terminate this Agreement for failure to comply with its terms, with written notice at least sixty (60) days in advance.
- If the breach is remedied within the notice period to the satisfaction of the non-breaching party, this Agreement shall remain in effect.

11. General Provisions

- Amendments must be in writing and approved by the Mayor and City Council.
- The Association may not assign its interest without written approval from the City.
- The Association shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability.
- Nothing in this Agreement waives the City's governmental immunity.
- The City liaison shall be the Parks and Recreation Director; the Association liaison shall be the Association President.

12. Notices

All required notices shall be sent to the respective parties' designated addresses.

2026 Blackout Dates

Blackout dates are designated dates on which the Association is **not permitted to schedule, host, or conduct any practices, games, tournaments, events, or other activities** at City of Kennesaw baseball facilities. These dates are reserved for City-sponsored programming, special events, maintenance, or other operational needs as determined by the City.

The City of Kennesaw reserves the right to **update or modify the list of blackout dates at any time**. The City will provide the Association with **reasonable and proper notification** of any changes or additions to the blackout dates as far in advance as practicable.

Failure to comply with blackout date restrictions may result in revocation of field use privileges or other actions as outlined in this agreement.

- January 1: New Year's Day
- January 19: MLK Day
- March 7: Touch-a-Truck
- April 10- 12: External Baseball Tournament
- April 18- 19: Big Shanty Festival
- May 26: Memorial Day
- June 12- 16: External Baseball Tournament
- June 20- 21: External Baseball Tournament
- June 24- 28: External Baseball Tournament
- July 3: Independence Day
- September 7: Labor Day
- October 16- 17: Pigs & Peaches BBQ Festival
- November 26- 27: Thanksgiving
- December 24- 25: Christmas

Document Submission Deadlines (Summary)

Document	Due Date
Non-resident fees & backup documentation	Within 2 weeks of first game/event
Facility & service fees	Within 2 weeks of first game/event
Annual Financial Review/CPA Compilation	Within 30 days of tax submission
Seasonal budget submission	Before season start
Year-end balance sheet & bank statement	End of calendar year
List of officers & contact information	Before season start
Board meeting schedules	At least 7 days before meeting
By-laws submission	Annually, before season start
Proof of bonded officers	Annually, after Agreement renewal
Proof of 1099 issuance	By March 1 each year

Background checks for volunteers

Annually, before working with
minors

Practice, game, and tournament
schedules

At least 2 weeks prior to occurrence

Make-up game notification

By 10 a.m. on game day

Proof of insurance coverage

Before season start

Signatures

For the Association:

President: _____

Board Member: _____

For the City of Kennesaw:

Mayor: _____

City Clerk: _____



Item Report

TO: The Honorable Mayor and City Council
FROM:
DATE: February 23, 2026
TITLE: Reports, Discussions, and Updates

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: February 23, 2026

TITLE: Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

None