

#### MAYOR AND COUNCIL MEETING MONDAY, FEBRUARY 15, 2021 6:00 PM DALTON CITY HALL

### AGENDA

#### Call to Order

**Pledge of Allegiance** 

Approval of Agenda

**<u>Public Commentary:</u>** (Please Complete Public Commentary Card Prior to Speaking)

#### Minutes:

1. Mayor and Council Minutes of February 1, 2021

#### New Business:

- 2. Oath of Office City Attorney
- <u>3.</u> Professional Services Agreement City Attorney
- <u>4.</u> Resolution 21-01 Sign Variance Request Re-Location/Refurbishment of Non-Conforming Signage at 1517 W. Walnut Ave (Chick-fil-A)
- 5. Resolution 21-02 Authorizing Agreement with Local Medical Professionals to Administer COVID-19 Vaccine Program
- <u>6.</u> Police Department Code Enforcement Update 2020 Year End Review
- 7. First Reading Ordinance 21-01 Updating Article VI (Nuisances) of Chapter 50 of the City Code
- 8. First Reading Ordinance 21-02 Updating Article VI "Franchise Fees" of Chapter 118 "Utilities" of the City Code

#### Supplemental Business

#### Adjournment

#### THE CITY OF DALTON MAYOR AND COUNCIL MINUTES FEBRUARY 1, 2021

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor David Pennington, Council members Annalee Harlan via Zoom, Derek Waugh, Tyree Goodlett, and Gary Crews, City Administrator Jason Parker and City Attorney Gandi Vaughn.

#### CALLED TO ORDER

The Mayor called the Regular meeting of the Mayor and Council to order.

#### PLEDGE OF ALLEGIANCE

The audience was led in the Pledge of Allegiance.

#### APPROVAL OF AGENDA

On the motion of Council member Harlan, second Council member Waugh, the Mayor and Council approved and added the Trade Center Appointments to the agenda. The vote was unanimous in favor.

#### PUBLIC COMMENTARY

Allyson Coker, Project Manager of Believe Greater Dalton, introduced Lauren Holverson as the new Executive Director of the Dalton Innovation Accelerator., Coker stated Holverson will be a huge asset with intrapreneurship efforts and will be assisting businesses downtown and working with DDDA.

#### **MINUTES**

The Mayor and Council reviewed the Regular Meeting Minutes of January 19, 2021. On the motion of Council member Crews, second Council member Waugh, the minutes were approved. The vote was unanimous in favor.

#### ALCOHOL BEVERAGE APPLICATIONS

On the motion of Council member Waugh, second Council member Crews, the Mayor and Council approved the following applications:

#### (3) 2021 ALCOHOL APPLICATIONS

<b>Business Owner:</b>	La Fogata Fusion Restaurant, Inc.
d/b/a:	La Fogata Fusion Restaurant
Applicant:	Grechy S. Suazo
Business Address:	702 5 <sup>th</sup> Ave
Type:	Pouring Beer, Pouring Wine, Pouring Liquor
Disposition:	New
Business Owner:	Unik Sweet Delights, LLC
	Unik Sweet Delights
Applicant:	Jose L. Jimenez Lopez
Business Address:	238 N. Hamilton St, Suite 1
Type:	Pouring Wine, Package Wine
Disposition:	New
	d/b/a: Applicant: Business Address: Type: Disposition: Business Owner: d/b/a: Applicant: Business Address: Type:

Mayor and Council Minutes Page 2 February 1, 2021

#### ALCOHOL BEVERAGE APPLICATIONS

Continued

3.	<b>Business Owner:</b>	Glenwood Exxon, Inc.
	d/b/a:	Rapids
	Applicant:	Farhan Dhanani
	<b>Business Address:</b>	1016 N. Glenwood Ave
	Type:	Package Beer, Package Wine
	Disposition:	New

The vote was unanimous in favor.

#### EMCOR SERVICES HVAC CONTRACT RENEWAL FOR CITY HALL

The Mayor and Council reviewed the renewal contract with EMCOR Services for HVAC Maintenance at City Hall. Human Resources Director Greg Batts stated the contract will remain at the previous year's amount of \$6504.00. On the motion of Council member Goodlett, second Council member Crews, the contract was approved. The vote was unanimous in favor.

#### BOARD COMMISSION AND AUTHORITY APPOINTMENTS

On the motion of Council member Harlan, second Council member Waugh, the Mayor and Council approved the following re-appointment submitted below:

Trade Center Mike Kinsey 02-01-2022

The vote was unanimous in favor.

#### **ADJOURNMENT**

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:04 p.m.

Bernadette Chattam City Clerk

David Pennington, Mayor

Recorded Approved: \_\_\_\_\_ Posted: \_\_\_\_\_



# CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting
Meeting Date:	2-15-2021
Agenda Item:	Oath of Office – City Attorney
Department:	Administration
Requested By:	Jason Parker
Reviewed/Approved by City Attorney?	NA
Cost:	NA
Funding Source if Not in Budget	NA

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Oath of Office administered by Municipal Court Judge Robert Cowan

#### OATH

I, **Terry L. Miller**, a citizen of the State Georgia, and the recipient of public funds for services rendered as City Attorney for the City of Dalton, do hereby solemnly swear and affirm that:

- (1) I am not the holder of any unaccounted for public money due the State of Georgia, or any political subdivision or authority thereof;
- (2) I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which by the laws of the State of Georgia I am prohibited from holding;
- (3) I am otherwise qualified to hold the office to which I was appointed according to the Constitution and the laws of the State of Georgia;
- (4) I will support the Constitution of the United States and of this State.

This \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2019.

Terry L. Miller

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**NOTARY PUBLIC** 

{SEAL}



# CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting
Meeting Date:	2-15-2021
Agenda Item:	Professional Services Agreement - City Attorney
Department:	Administration
Requested By:	Jason Parker
Reviewed/Approved by City Attorney?	No
Cost:	\$150/hour
Funding Source if Not in Budget	General Fund
Please Provide A Summa Explain the Request:	ary of Your Request, Including Background Information to

Professional Services Agreement with Mitchell and Mitchell, PC (City Attorney Terry Miller)

#### AGREEMENT AS TO THE PROVISION OF CITY ATTORNEY LEGAL SERVICES FOR THE CITY OF DALTON, GEORGIA

THIS AGREEMENT ("Agreement") represents the understanding between **the City of Dalton** (the "City"), a municipal corporation, and **Terry L. Miller**, City Attorney for the City (the "City Attorney"), and **Mitchell & Mitchell, PC** (the "Firm") regarding the services to be provided by the City Attorney and compensation for time and expenses related thereto effective on the date signed by the last signing party, and until further modified by mutual agreement between the parties.

WHEREAS, the City desires to appoint Terry L. Miller of Mitchell & Mitchell, PC as the City Attorney for the purpose of providing legal guidance to the City as set forth herein;

WHEREAS, as set forth below, the City further intends to use the legal services of **Mitchell & Mitchell, PC**, including its partners, associates, and paralegal staff, to support the City Attorney's performance of his position and official duties;

WHEREAS, Mitchell & Mitchell, PC designates Terry L. Miller as the primary provider to the City and to perform the position of City Attorney.

#### A. <u>Acceptance of Appointment</u>.

By signing this Agreement, the undersigned Terry L. Miller hereby accepts the appointment as City Attorney and lead lawyer on all matters related to his representation, though other lawyers may assist him as necessary. The City Attorney shall provide quality services in an efficient and economical manner. In addition, the Firm accepts appointment to serve and support the City Attorney through its partners, associates, and paralegal and other administrative staff in the performance of his duties as set forth and in accordance with the terms herein. The City Attorney shall take the applicable oaths prescribed by Chapter 3 of Title 45 of the Official Code of Georgia.

#### B. <u>General Non-Litigation Legal Services</u>.

The City Attorney and the Firm shall provide general legal and other services to the City including, but not limited to, the following:

1. Legislative work associated with City Council meetings, including preparation or review of ordinances and resolutions, and written policies and procedures, together with research work, as necessary, associated with the preparation of those documents. This activity shall include providing assessments of legal likelihoods in support of City risk analyses.

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- 2. Prepare oral and written opinions on legal matters as required by the City Council and/or the City Administrator.
- 3. Negotiate and prepare agreements, leases, contracts, or similar documents.
- 4. When requested by the City Council or the City Administrator, perform investigations that may require interviewing witnesses, taking testimony, review of reports, and legal research.
- 5. Provide legal counseling, guidance and opinions to the City Administrator and Department Directors regarding the operations of the City.
- 6. Participate in meetings and/or telephone conferences with the City Administrator and/or City staff as requested by the City Administrator, as required.
- 7. Provide staff assistance, legal research and counseling related to the acquisition or sale of real property, preparation of leases, deeds and easements; utility franchise agreements; referendum questions, contracts, surety/performance/payment bonds, insurance policies, bills of sale, liens, waivers, subordinations, and other legal instruments; liability situations; grant guidelines; arbitration; and other matters as necessary requiring legal advice.
- 8. Prepare and/or review ordinances, resolutions, documents and papers that pertain to City matters at the request of City Council or the City Administrator.
- 9. Maintain legal files and provide to the City Administrator copies of all correspondence, and all pleadings and orders in all litigation the City Attorney is handling for the City. On a monthly basis, the City Attorney will provide a summary written report on the status of all litigation that the City Attorney is directly handling or is overseeing on behalf of the City. Furthermore, the City Attorney shall notify the Mayor, Council and City Administrator within 48 hours of any ante litem notice, any notice of claims, and/or any legal actions which have been initiated against the City.
- 10. Keep the Mayor, City Council and the City Administrator informed of legislation or judicial decisions that have the potential to impact the City.
- 11. Oversee, in a cost-effective manner, litigation in which the City is represented by the City's insurance carriers, statutory risk management pools, and/or any other outside legal counsel appointed by the City.
- 12. Perform other professional duties as may be required including, but not limited to, conducting legal research as required for the performance of duties in representing the City.

- 13. Participate in special projects as authorized by the Mayor, City Council, or City Administrator including, but not limited to, the negotiation for sale of purchase of real estate, including fee ownership and easements and acquisition of interest in real estate through the exercise of eminent domain by the City.
- 14. Provide advice to the City Administrator and/or any other individual designated as an open records officer regarding exemptions applicable to public records sought via the Georgia Open Records Act.
- 15. Provide assistance and preserve City records in accordance with the City's record retention schedule.
- 16. File all petitions to abate a public nuisance on behalf of the City.
- 17. Serve as legal counsel to the City Council, Pension Board, Public Safety Commission, and any other board, commission, and/or authority as prescribed by state or local law.
- 18. Attend all regular meetings of the City Council, all special meetings, work sessions and executive sessions, and any other City meetings as requested by the Mayor, City Council, or the City Administrator.
- 19. Attend all regular meetings, all special meetings, work sessions, and executive sessions of the Pension Board, Public Safety Commission, and any other board, commission, and/or authority as prescribed by state or local law.
- 20. Handle petitions, or other business, as requested in the City of Dalton Municipal Court.
- 21. Assist with all other legal matters requested by the City.

#### C. <u>Relationship Among City Attorney and Other Attorneys</u>.

The City Attorney is the lead attorney for the City in the provision of the general services described above. As such, the City Attorney shall work cooperatively with any other attorney(s) retained by the City, who shall take direction from and be under the City Attorney's supervision. Moreover, the Firm, including its partners, associates, and paralegal staff, will serve under the supervision of the City Attorney.

The City Attorney will be the initial contact for legal advice and representation for legal work needed by the City, Mayor, Council and staff. The City Attorney, in consultation with the City Administrator, will determine the most efficient and effective use of in-house attorneys and any outside counsel.

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#### D. <u>Retaining Other Legal Professionals</u>.

It may be necessary or desirable in certain cases to retain the legal services of others who have expertise in the particular matter under review. Fees incurred by such professionals will be paid directly to the professional providing such services. If the City Attorney recommends the services of any such professional to be used in this manner, such recommendation shall be submitted to the City Administrator for review and approval prior to utilization of the professional.

#### E. <u>Fees and Expenses</u>.

1. **General Non-Litigation Legal Services.** Time expended by the City Attorney on providing general non-litigation legal services, including any attorneys that may assist the City Attorney, is billed on the basis of an hourly rate for attorneys' and paralegals' time, plus reimbursable expenses. The City Attorney's hourly rate is \$150 per hour. Other attorneys in the firm may have different rates; however, such rates shall not exceed the hourly rate of \$150 per hour. At the time of this Agreement, the Firm is authorized to bill the City for the services of attorney William J. Kimsey at a rate of \$150 per hour and attorney W. Cody Newsome at a rate of \$100 per hour. The City Attorney and/or the Firm must obtain approval from the City Administrator prior to billing any time for paralegals or other support personnel.

These rates may be modified over time by agreement with the City, usually at the first of the year when the City Attorney typically reviews his rate structure. In addition, the City Attorney shall bill for reimbursable expenses. The City Attorney and the Firm will comply with all applicable federal, state, and local ethics and gifts and gratuities laws, rules, and regulations with regard to reimbursable expenses. The cumulative total of fees for general non-litigation services for the City Attorney and the Firm shall not exceed the amount of \$100,000 annually, without the prior written approval of the City Administrator.

2. Litigation Legal Services. Time expended by the City Attorney on providing services for litigation matters, including any attorneys that may assist the City Attorney, is billed on the basis of an hourly rate for attorneys' and paralegals' time, plus reimbursable expenses. "Litigation matters" means all actions filed in Federal District Court, Superior Court, or State Court against the City. Separate billing will begin on litigation matters only after the date of filing of an action against the City. These litigation matters differ from those actions in which the City may be defended solely by its insurer. As long as the City, its elected officials, officers and personnel are named as parties to the litigation, the City Attorney is to be included as an attorney of record and will appear either personally or through a designee before the applicable court for any hearing or trial to protect the interest of the City and its officials. The City Attorney's hourly rate for litigation services is \$150 per hour. Other attorneys in the firm may have different rates; however, such rates shall not exceed the hourly rate of \$150 per hour. At the time of this Agreement, the Firm is authorized to bill the City for the services of attorney William J. Kimsey at a rate of \$150 per hour and attorney W. Cody Newsome at a rate of \$100 per hour. The City

City Atty. Agreement Page 4 of 9 2-15-2021 Attorney and/or the Firm must obtain approval from the City Administrator prior to billing any time for paralegals or other support personnel.

These rates may be modified over time by agreement with the City, usually at the first of the year when the Firm typically reviews its rate structure. In addition, the City Attorney shall bill for reimbursable expenses. The City Attorney and the Firm will comply with all applicable federal, state, and local ethics and gifts and gratuities laws, rules, and regulations with regard to reimbursable expenses. Time and expenses related to litigation services will be approved on a case-by-case basis in consultation with the City Administrator.

#### F. <u>Fees and Expenses</u>.

The City Attorney and/or the Firm shall forward all statements for services and expenses on a monthly basis via mail to the City of Dalton, P.O. Box 1205, Dalton, GA 30722, together with all backup required by the City's Finance Director. Payment shall be made within twenty (20) days of receipt of a compliant statement. The City will have the right to request additional notes and documentation as to individual charges. The City Attorney and/or the Firm shall respond in a timely manner to any questions about charges invoiced by the City Attorney. Monthly statements shall be mailed no later than the 10th of each month for the prior months' billing and must include a detailed breakdown of the service provided and total billable hours, to the nearest tenth of an hour for each charge.

#### G. <u>Activities of the City Attorney</u>.

The City Attorney and/or the Firm shall keep the Mayor, Council and the City Administrator informed about the progress of his activities on the City's behalf and also, upon the City's request, of his estimates concerning additional time and cost which may be required in any case or matter. These reports and updates will be as complete as the City Administrator required.

#### H. <u>Conduct of the City Attorney</u>.

The City acknowledges that the City Attorney and other attorneys from the Firm are engaged in the private practice of law for compensation in addition to their legal work for the City. The City Attorney and any other attorneys under his supervision will comply with the state bar standards governing the professional conduct of lawyers and will not represent a client in private practice if doing so would constitute a concurrent conflict of interest or would impair in any way the attorney's ability to represent the City and the City's interests.

#### I. <u>Resolution of Disagreement as to Terms</u>.

In the event there is disagreement between the City Administrator and the City Attorney as to whether certain services are covered under this Agreement, the City Administrator shall notify the City Attorney immediately for discussion and resolution. If the matter is not resolved by the City Administrator and the City Attorney, the matter shall be forwarded to City Council for a final determination.

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#### J. <u>Independent Contractor</u>.

The City Attorney and the Firm shall be independent contractors of the City. Neither the City Attorney nor the Firm have any right to participate in any City-provided employee benefit program. The City Attorney and the Firm shall maintain active status as a City of Dalton Vendor, including professional liability insurance with errors and omissions coverage.

#### K. <u>Membership</u>.

The City Attorney and the Firm warrant that all attorneys performing duties under this Agreement are active members in good standing with the State Bar of Georgia and are admitted to practice before the appellate courts of the State of Georgia. The City Attorney and the Firm further warrant that any attorneys performing duties under this Agreement shall maintain such professional status during the term of this Agreement. If a writ of quo warranto is brought to determine the qualifications of the City Attorney to serve as the City Attorney and is granted, the City Attorney and/or the Firm will be responsible for all legal and defense fees associated with said action.

#### L. <u>Term and Termination</u>

The term of this Agreement shall commence on the date signed by the last signing party and will continue for one month after the date of said signing. Notwithstanding the expiration of the term of this Agreement, this Agreement shall automatically renew from month to month under the same terms and conditions as stated herein.

Either party may terminate this Agreement at any time by giving thirty (30) days' notice in writing to the other party. Notice of termination shall be delivered either in person; by certified mail, return receipt requested; or by statutory overnight delivery. The date of receipt or attempted delivery shall be the delivery date of such notice.

If this Agreement is terminated by the City other than for default by the City Attorney or an attorney supervised by the City Attorney or for any of the reasons set forth below, the City Attorney shall be paid for services performed and expenses incurred up to the effective date of termination. The City will also have the right to terminate this agreement immediately and without notice in writing if any of the following occur:

- 1. If the City Attorney ceases, for any reason, to be an active member of the State Bar of Georgia in good standing;
- 2. If the City Attorney and/or the Firm breaches this agreement;

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- 3. If the City Attorney and/or the Firm fails to adequately render professional services as set forth herein;
- 4. If the City Attorney and/or the Firm engages or commits fraud, dishonesty or other acts of misconduct by Terry L. Miller and/or the Firm in the rendering of professional services as required herein;
- 5. If the City Attorney ceases to be affiliated with the Firm for any reason;
- 6. If the City Attorney fails or refuses to faithfully or diligently perform the provisions of this Agreement, as determined by the City; or
- 7. The City Attorney retires from the practice of law.

#### M. <u>Entire Agreement; Modification; Severability; Warranties.</u>

- 1. The City Attorney, the Firm, and the City understands, acknowledges, and agrees that this Agreement contains the entire understanding of the City Attorney, the Firm, and the City with regard to the subject-matter hereof, that it supersedes any and all prior written or oral agreements or understandings between the City Attorney, the Firm, and the City regarding such subject matter, and that there are no other agreements, understandings, representations, or warranties regarding such subject-matter not set forth or otherwise referenced or incorporated herein.
- 2. The City Attorney, the Firm, and the City agree to execute any other agreement, consent, authorization, release, waiver, or other document or form determined to be necessary to enforce or give effect to the intent of this Agreement or any provision hereof.
- 3. The City Attorney, the Firm, and the City acknowledge, understand, and agree that this Agreement may not be modified or canceled in any manner, nor may any provision of it or any legal or equitable remedy with respect to it be waived, except in writing signed by all Parties.
- 4. The City Attorney, the Firm, and the City acknowledge, understand, and agree (i) that the terms, conditions, restrictions, limitations, and obligations set forth in the various paragraphs, sections, and provisions of this Agreement are intended to be, and shall be considered and construed as, separate and independent; (ii) that to the extent any such term, condition, restriction, limitation, obligation, paragraph, section, or provision (or any part or portion thereof) is determined to be invalid, void, or unenforceable by any court, arbitrator, or other authority having jurisdiction in the matter, it shall be considered deleted herefrom; and (iii) that any such determination shall not render invalid, void, or unenforceable any other term, condition, restriction, limitation, paragraph, section, or provision of this Agreement.

City Atty. Agreement Page 7 of 9 2-15-2021 5. The City Attorney and the Firm acknowledge, understand, and agree that the City has the sole right to enter into and end the attorney-client relationship between the parties and that neither the City Attorney nor the Firm has any right to seek specific performance to continue serving as the City Attorney or as legal counsel to the City.

#### N. <u>Construction and Execution</u>

- 1. No provision of this Agreement is intended or shall be interpreted or applied so as to preclude either the City Attorney, the Firm, or the City from complying with any federal, state, or local law, rule, or regulation.
- 2. The City Attorney, the Firm, and the City acknowledge and agree that it is their mutual intent that this Agreement be interpreted, construed, and enforced according to the laws of the State of Georgia and that it be interpreted and construed as if drafted by the City Attorney, the Firm, or the City such that no rule of strict construction shall apply.
- 3. The City Attorney, the Firm, and the City acknowledge, understand, and agree that headings contained in this Agreement are inserted for convenience and ease of reference only, that they shall not be deemed to be a part of this Agreement for any purpose, and that they shall not in any way define or affect the meaning, construction, or scope of any of the terms or conditions hereof.
- 4. The City Attorney, the Firm, and the City agree that this Agreement may be executed in separate counterparts and that each counterpart shall be deemed an original with the same effect as if the City Attorney, the Firm, or the City had signed the original document.
- 5. Nothing in this Agreement, express or implied, is intended to confer on any person or entity not a party to this Agreement any right or remedy by reason of this Agreement.
- 6. No provision of this Agreement shall be deemed waived, nor shall there be an estoppel against the enforcement of any such provision, except by a writing signed by the party charged with the waiver or estoppel. No waiver shall be deemed continuing unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any act other than that specifically waived.

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IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date below.

#### City of Dalton, Georgia

#### Mitchell & Mitchell, PC Law Firm

By: \_\_\_\_\_ Mayor

(Seal) William J. Kimsey Member and Secretary

Date: \_\_\_\_\_

Attest:

City Clerk

Date: \_\_\_\_\_

Terry L. Miller (Seal)

**City Atty. Agreement** Page 9 of 9 2-15-2021



# **CITY COUNCIL AGENDA REQUEST**

Meeting Type:	Mayor & Council Meeting
Meeting Date:	02/15/2021
Agenda Item:	Resolution 21-01 Sign Variance Request – Re- Location/Refurbishment of Non-Conforming Signage at 1517 W. Walnut Ave (Chick-fil-A)
Department:	Public Works / Planning-Zoning
Requested By:	Andrew Parker
Reviewed/Approved by City Attorney?	Yes
Cost:	N/A
Funding Source if Not in Budget	N/A

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

As part of a site improvements project, Chick-fil-A (W. Walnut Avenue) is requesting a sign variance for re-location/refurbishment of existing non-conforming signage.

The applicant's request includes refurbishing the existing 75' hi-rise sign which primarily introduces a new color scheme reflected in the drawings enclosed. The variance request will also include allowing the additional 40' pylon sign onsite to be replaced with a new, matching pylon sign. It should be noted that in the drawings provided, the pylon sign depicts a potential aerial encroachment into the right of way of SR 52. The applicant shall be directed to the GDOT Traffic Operations Office (District 6-Cartersville) for approval/coordination of this encroachment.

#### RESOLUTION NO. <u>21-01</u>

#### (Sign Variance)

BE IT RESOLVED by the Mayor and Council of the City of Dalton and pursuant to authority of same IT IS HEREBY RESOLVED, as follows:

#### -1-

SBO SERVICES, LLC, as agent for Chick-fil-A, Inc. (Dalton), for its commercial site at 1517 West Walnut Avenue, Dalton, Georgia 30720 (Whitfield County Tax Parcel NO. 12-260-19-000) and Zoning Classification of C-3 Commercial, has made a variance application for relocation of non-conforming signage pursuant to the City's Ordinance regulating exterior signs, Appendix B, City of Dalton Code of Ordinances.

#### -2-

Under Section 6.4 of that Ordinance the Mayor and Council is authorized to permit an existing nonconforming sign structure to be relocated and rebuilt upon the same or contiguous parcel provided certain criteria all found to be met.

#### -3-

It is the finding of the Mayor and Council upon investigation of its various departments and agencies and upon consideration of the details of the Application:

- a) grant of requested variance will enhance the economic value and/or future development potential of the affected property;
- b) grant of requested variance will not increase any dimension of the original existing nonconforming sign structure;
- c) grant of variance will have no effect on a lease term of the nonconforming structure; and

d) grant of variance will not violate any applicable zoning restrictions or permitting requirements.

#### -4-

RESOLVED, that the variance application is approved in accordance with its terms contingent upon any required approval of the Georgia Department of Transportation. Implementation of the relocation remains subject to the combined authorities of the City's Zoning Administrator, Building Inspection office, and Public Works Director

This \_\_\_\_\_ day of February, 2021.

#### CITY OF DALTON

By:\_\_\_\_\_ Mayor

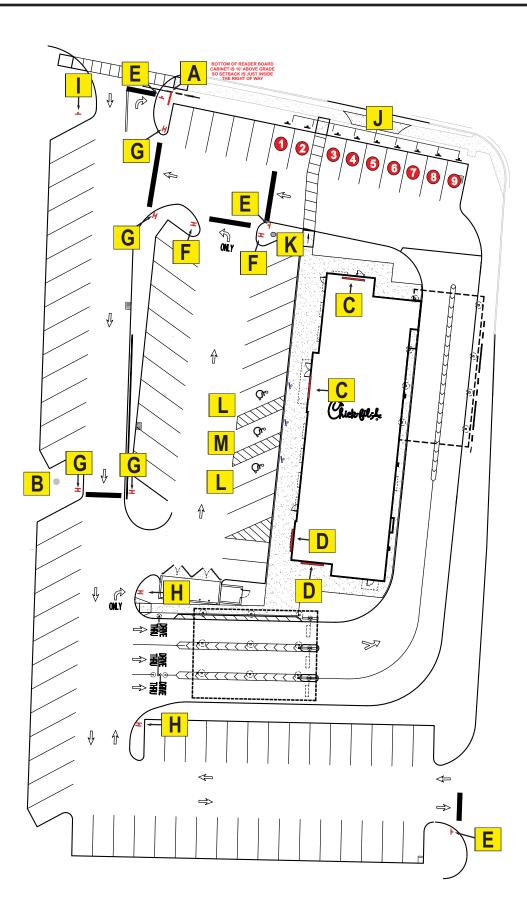
ATTEST:

City Clerk

#### APPLICATION FOR THE RE-LOCATION OF NON-CONFORMING SIGNAGE WITHIN THE CITY OF DALTON

Date Received: \_\_\_\_/\_\_\_/\_\_\_\_

Name of Applicant: SBG S	ervices IIC - Matthew Fole	y Telephone:678-694-1967
		eek, GA. 30022
	<u> </u>	alton Telephone:
		A. 30720
		oning Classification: <u>C3 - Commercial</u>
		-
_		ribe each building as requested below:
Type 1Commercial	Use Restaurant/Fastfood	Size 4,070sq.ft
2		
3		
Reason for Appeal: (Attach	site plan/drawing/survey and	other documentation as needed)
The code allows for (1) 40' tall 128 sqft	sign. There are two pylon signs that are or	the property. The variance we are seeking is to have a
pylon that meets code in addition to kee	ping the 75' hi-rise sign that already exist.	The reasoning for the variance would be that Chick-fil-A
is tearing down the existing building and	building a new one. In that process the en	rance will be and the existing pylon will need to moved
be removed. The hope is that the ability	to have (2) freestanding signs will be gran	dfathered in.
FOR OFFICE USE ONLY:	DATE OF HEA	RING//
DATE PROPERTY POSTED	// DATE A	DVERTISED/
DECISION OF CITY COUNC	CIL	
VOTE:		





5198 North Lake Drive Lake City, GA 30260 404-361-3800 fax 404-361-7038 website - www.claytonsigns.com

S and R		ALL ELECTRICAL	DRAWN BY BRANDON GUEST	STORE NUMBER	STORE ADDRESS
S UIU K			ACCOUNT REP. BRANDON GUEST	047	Chick-Fil-A
		120 VOLTS UNLESS	DRAWING DATE 05-03-19	81/	1517 West Walnut Ave Dalton. GA 30720
	DRAWING FILE -	OTHERWISE INDICATED		••••	Dalton

	QTY
PYLON	1
EXISTING HI-RISE (REFURBISHED)	1
CHANNEL LETTERS (5')	2
WALL ICON (71" x 71")	2
STOP	3
STOP - DO NOT ENTER / NO RIGHT TURN	2
STOP - DO NOT ENTER	4
DRIVE THRU 🔶 / DRIVE THRU ←	2
CIRCLE BUILDING FOR D/T - NO LEFT TURN	1
CURBSIDE DELIVERY	8
FLAG POLE (50')	1
ADA	2
ADA WITH VAN ACCESS	1

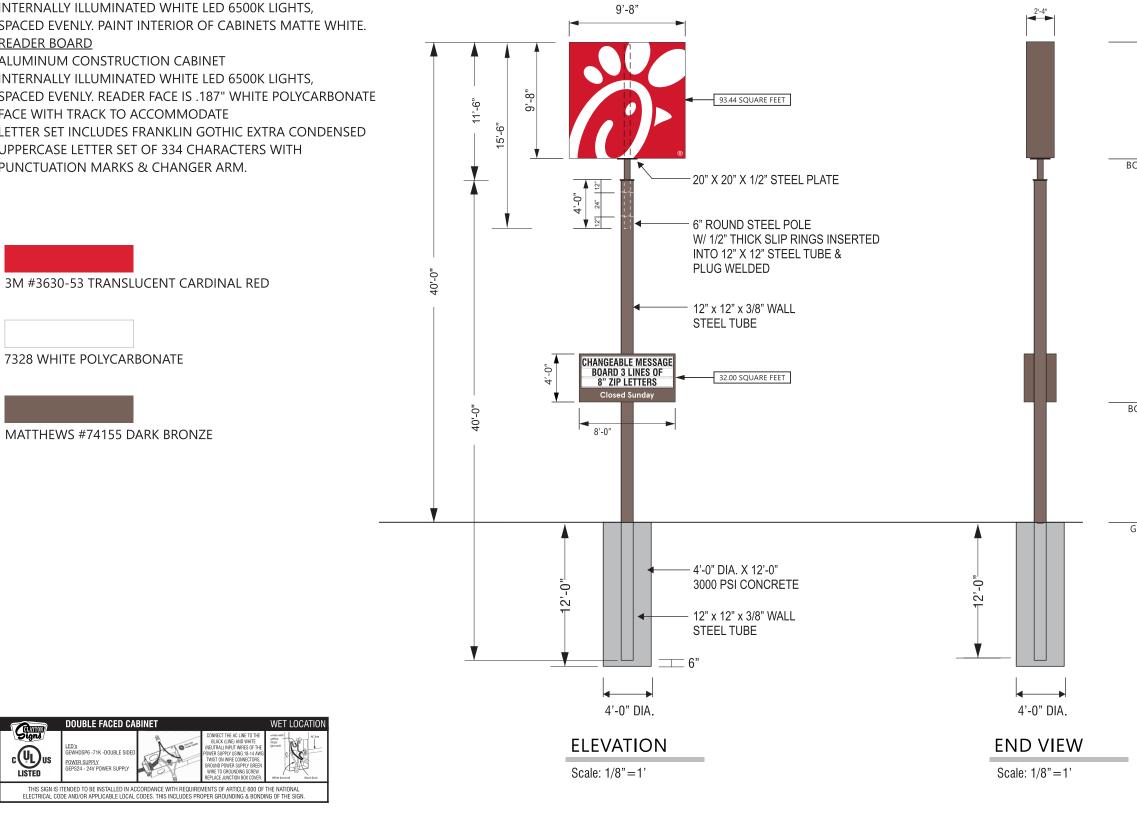
### **SPECIFICATIONS**

#### CABINET

D/F ALUM. CABINET WITH SIGNCOMP RETRO FLAT BLEED FRAME AND COVER, WITH .063" ALUM FILLER. INTERNALLY ILLUMINATED WHITE LED 6500K LIGHTS, SPACED EVENLY. PAINT INTERIOR OF CABINETS MATTE WHITE. READER BOARD

ALUMINUM CONSTRUCTION CABINET INTERNALLY ILLUMINATED WHITE LED 6500K LIGHTS, SPACED EVENLY. READER FACE IS .187" WHITE POLYCARBONATE FACE WITH TRACK TO ACCOMMODATE LETTER SET INCLUDES FRANKLIN GOTHIC EXTRA CONDENSED UPPERCASE LETTER SET OF 334 CHARACTERS WITH PUNCTUATION MARKS & CHANGER ARM.

125.44 SQUARE FEET



MATTHEWS #74155 DARK BRONZE

7328 WHITE POLYCARBONATE

CLAYTON	DOUBLE FACED CA	BINET		WET LOCATION
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5198 North Lake Drive
Lake City, GA 30260
404-361-3800 fax 404-361-7038
website - www.claytonsigns.com

and R		ALL ELECTRICAL	DRAWN BY BRANDON GUEST	STORE NUMBER	STORE ADDRESS
	SIGNS ARE 120 VOLTS	ACCOUNT REP. BRANDON GUEST	047	Chick-Fil-A	
	UNLESS	DRAWING DATE 05-03-19	81/	1517 West Walnut Ave Dalton. GA 30720	
	DRAWING FILE -	OTHERWISE INDICATED			Dalton

40'-0 " TOP OF SIGN

30'- 4" BOTTOM OF CABINE

10'- 0" BOTTOM OF READER

0'-0 " GRADE AT SIGN BASE

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## **PROPOSED REFURBISHED SIGN**



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S and R

	ALL ELECTRICAL SIGNS ARE <b>120 VOLTS</b> UNLESS OTHERWISE INDICATED	DRAWN BY BRANDON GUEST	STORE NUMBER	STORE ADDRESS
		ACCOUNT REP. BRANDON GUEST	817	Chick-Fil-A 1517 West Walnut Ave Dalton, GA 30720
		DRAWING DATE 05-03-19		
DRAWING FILE -				Dalton



## **EXISITNG SIGN**

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# **CITY COUNCIL AGENDA REQUEST**

Meeting Type:	Mayor & Council Meeting	
Meeting Date:	2-15-21	
Agenda Item:	Resolution 21-02 Authorizing Agreement with Local Medical Professionals to Administer COVID-19 Vaccine Program	
Department:	Police	
Requested By:	Chief Cliff Cason	
Reviewed/Approved by City Attorney?	Yes	
Cost:	NA	
Funding Source if Not in Budget	NA	
Please Provide A Summary of Your Request, Including Background Information Explain the Request:		

Resolution 21-02 Authorizing Agreement with Local Medical Professionals to Administer COVID-19 Vaccine Program.

to

#### CITY OF DALTON RESOLUTION Resolution No. 21-02

#### RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH LOCAL MEDICAL PROFESSIONALS FOR THE PARTICIPATION IN THE CITY OF DALTON COVID-19 VACCINE PROGRAM

**WHEREAS**, on March 14, 2020 Governor Kemp issued Executive Order No. 03-12-20.01 declaring a public health state of emergency in the State of Georgia due to COVID-19; and

**WHEREAS**, the Governor has renewed the public health state of emergency from time to time throughout 2020 and 2021; and

**WHEREAS**, there exists within our community a continued need for protecting the citizens from COVID-19; and

**WHEREAS**, the Federal Food and Drug Administration has issued an emergency use authorization for vaccines to combat COVID-19; and

WHEREAS, there exists a need in our community to provide the COVID-19 vaccines; and

**WHEREAS**, the Mayor and Council have determined that it is in the best interest of the City and the citizens of our community to contract with leaders in our local medical profession to distribute and administer the COVID-19 vaccines.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Council hereby authorizes the Public Safety Commission to identify qualified, licensed medical professionals to distribute and administer the COVID-19 vaccines to the citizens of our community as part of the City of Dalton vaccine program.

**BE IT FURTHER RESOLVED,** that the City shall provide legal services by the City Attorney, or other attorneys as may be determined by the CITY, to defend any injury related liability claim made against the AGENT to assert any immunity defense arising from the sovereign immunity of the City of Dalton as a municipal corporation of the State of Georgia and any immunity defense arising from the Federal Public Readiness and Emergency Preparedness Act (PREP Act) at the City's expense for any personal injury or death liability claim arising from the administration of a COVID-19 vaccine pursuant to the City of Dalton vaccine program.

**BE IT FURTHER RESOLVED**, that the Mayor and City Clerk are hereby authorized to execute an agreement with qualified, licensed medical professionals identified by the Public Safety Commission medical committee to distribute and administer the COVID-19 vaccines to the citizens in our community, a copy of which is attached to these Resolutions as Exhibit "A" (the "Agreement"); and

**BE IT FURTHER RESOLVED**, that all resolutions or parts thereof of the City of Dalton in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**BE IT FURTHER RESOLVED** that the City Clerk is authorized and directed to record this approved Resolution in the minutes of the City Council.

**BE IT FURTHER RESOLVED,** that this Resolution shall become effective immediately upon its approval by the Mayor and Council of the City of Dalton.

ADOPTED AND APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Resolution received its first readi	ng on A motion for passage
of the Resolution was made by Councilmember	, second by
Councilmember	and upon the question the vote is

ayes, \_\_\_\_\_\_ nays and the Resolution is adopted.

Attest:

CITY OF DALTON, GEORGIA

CITY CLERK

MAYOR

#### EXHIBIT "A"

#### **CITY OF DALTON**

#### VACCINE PROGRAM PROFESSIONAL SERVICES AGREEMENT

THIS VACCINE PROGRAM PROFESSIONAL SERVICES AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and \_\_\_\_\_, hereinafter referred to as "AGENT".

WHEREAS, the CITY desires to engage the AGENT to provide professional medical services; and,

WHEREAS, the CITY finds that the proposed Scope of Services and terms of this Contract are acceptable; and,

WHEREAS, the AGENT desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

WITNESSETH: That the parties hereto for the considerations hereinafter provided covenant and agree as follows:

1. EMPLOYMENT OF AGENT: The CITY hereby engages the AGENT and the AGENT hereby agrees to perform the professional medical services hereinafter set forth.

2. SCOPE OF SERVICES: The AGENT shall distribute and administer COVID-19 vaccines as part of the City of Dalton vaccine program.

3. ADDITIONAL SERVICES: The AGENT shall provide additional services, not specifically provided for in Exhibit "A", upon written request and authorization by the CITY.

4. DATE OF COMMENCEMENT: The AGENT shall commence work on the project on \_\_\_\_\_\_, 20\_\_\_\_. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The AGENT shall complete the project on or before \_\_\_\_\_\_, 20 \_\_\_\_\_.

6. CONTRACT SUM: In lieu of the payment for professional services rendered, the CITY shall provide legal services by the City Attorney, or other attorneys as may be determined

by the CITY, to defend any injury related liability claim made against the AGENT to assert any immunity defense arising from the sovereign immunity of the City of Dalton as a municipal corporation of the State of Georgia and any immunity defense arising from the Federal Public Readiness and Emergency Preparedness Act (PREP Act) at the City's expense for any personal injury or death liability claim arising from the administration of a COVID-19 vaccine pursuant to the City of Dalton vaccine program.

7. CITY COVENANTS: CITY covenants and agrees:

(a) to provide all available information, data, reports, and other information to which CITY has possession or control which are necessary for AGENT to perform the scope of services provided for herein;

(b) to provide reasonable assistance and cooperation to AGENT in obtaining any information or documentation which are necessary for AGENT to perform the scope of services provided for herein;

(c) to designate a representative authorized to act on the CITY's behalf with respect to the project;

(d) to permit access to the subject public property and obtain permission to access necessary private property for AGENT to complete the scope of services at locations identified by CITY;

- 8. AGENT COVENANTS: AGENT covenants and agrees:
- (a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by licensed medical professionals practicing in the same or similar medical profession;
- (b) to maintain all required medical professional licenses necessary to complete the services during the term of this Agreement.
- (c) to use only employees and agents qualified and appropriately licensed to complete the work with sufficient experience and only after expressed written permission of the CITY;
- (d) to designate a representative authorized to act on the AGENT's behalf with respect to the project.
- (e) to use the subject property identified by the CITY for use in the vaccine program in a safe, careful and lawful manner;
- (f) to promptly report in writing to CITY any damage to or injuries sustained by the AGENT or any third party participating in the City of Dalton vaccine program

which is made necessary by any act of AGENT, its employees, or agents;

- (g) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (h) to exercise the ordinary standard of care in complying with the laws, codes, professional rules and medical regulations applicable to the AGENT's services;
- (i) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (j) to attend meetings, provide reports, or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;

9. ASSIGNMENT: AGENT may not assign all or any portion of the Agreement without the prior written permission of CITY.

10. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

11. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to:

City of Dalton ATTN: City Administrator P.O. Box 1205 Dalton, GA 30722-1205

Such notice to AGENT shall be mailed to:

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

12. TERMINATION OF CONTRACT: In the event that AGENT defaults or neglects to perform the services in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination.

#### 13. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. AGENT shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

AGENT:

AGENT:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

CITY:

CITY OF DALTON, GEORGIA

\_\_\_\_\_

By: \_\_\_\_\_\_ MAYOR

Attest: \_\_\_\_\_\_CITY CLERK



# CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting	
Meeting Date:	February 15, 2021	
Agenda Item:	Police Department Code Enforcement Update – 2020 Year End Review	
Department:	Police	
Requested By:	Assistant Chief Crossen	
Reviewed/Approved by City Attorney?	Yes/No	
Cost:	\$0	
Funding Source if Not in Budget		
Please Provide A Summary of Your Request, Including Background Information to		

Explain the Request:

Code Enforcement Officers have a PowerPoint Presentation of Accomplishments and a Year End Review

# Dalton Police Department Code Enforcement

# Presentation to The Mayor and City Council Members 2021

# **What is Code Enforcement?**

Code Enforcement is responsible for monitoring both public and private property, commercial and residential, to ensure that there are no health or safety hazards that might endanger the public and determining compliance with all City codes and ordinances.

These code requirements are the minimum standards the City has adopted to protect the interests and eliminate hazards that could affect public safety, health, and general welfare.

# **What is Code Enforcement?**

Traditionally Code Enforcement has been viewed as a process whereby local governments use various techniques to gain voluntary compliance with duly-adopted regulations, local ordinances, health and housing code, and sign standards.

Others view code enforcement as an annoying intrusion into the free use of private property.

The Dalton Police Department the Current Code Enforcement Assignments

> <u>One Operations Sergeant</u> Sgt. Woody Cantrell

# Two Code Enforcement Officers

Matt Lane and Ryan Shope

\*The third Code Enforcement position is currently vacant. We are working to increase staffing levels to be able to fill the vacancy.

# Why is Code Enforcement important?

Code enforcement officers address a wide range of issues that affect the environment , health, safety, property values and general well-being of all residents in Dalton.

Code Enforcement Officers ensure that residential and business properties are properly maintained, that trash and debris are disposed of, that inoperative/junk vehicles are not illegally stored.

## The Code Enforcement Division's routine functions include:

- Systematic code enforcement patrol of the entire city
- Investigate citizen complaints
- Contact code violators and monitor compliance activity
- Bring unresolved code violations to the Dalton Municipal Court and present evidence of the violation for the Court's consideration

## **Resources used for Code Enforcement**

Georgia State Statutes City of Dalton Ordinances Unified Zoning Ordinances International Property Maintenance Code Book

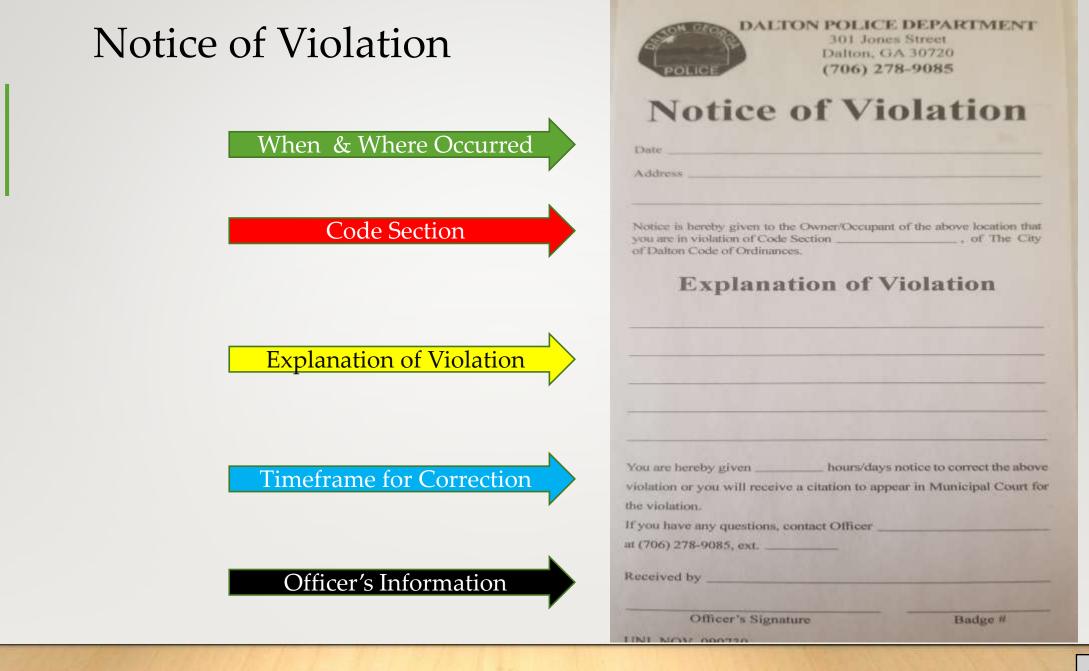
## Frequently Asked Questions

## How do I report a Code Violation?

- A code violation can be reported by completing an online code violation complaint through see click fix website.
- Code enforcement officers can be contacted via telephone/voicemail at Dalton Police Department
- Contact Whitfield County 911 center and request an officer responded to your location

## **What do I do if I receive a notice of violation from Code Enforcement?**

You should correct the violation before the date indicated on the notice. If you have any questions about what is required of you to achieve compliance, please contact the Code Enforcement Officer listed at the bottom of the notice you received.



## What is an Accumulation of Rubbish?

Rubbish is any combustible and noncombustible <u>waste materials</u>, except normal garbage.

Accumulation is the acquisition or gradual gathering of something. A mass or quantity that is gradually gathered or has been acquired

## **Accumulation of rubbish violations**



## How do I get rid of my Rubbish items?

The City of Dalton Public Works Department offers a free Bulky Waste Service to residents to help remove larger items from their property once approval for the item(s) has been granted by DPW.

## **Examples of refuse collection**

#### NOT APPROVED



#### APPROVED WITH CALL AHEAD



## <u>My neighbor's house is a mess!!</u> <u>Can't anybody help me?</u>

What someone perceives a "mess" may not necessarily be a code violation. However, any code violations noted at the property can be handled by a Code Enforcement Officer.

A Code Enforcement Officer can inspect the property and determine if there are issues that can be classified as violations.

### <u>My neighbor does not follow our HOA rules.</u> <u>Can the City force compliance?</u>

## Code Enforcement does not have the authority to enforce

HOA covenants and restrictions.

## What is the height limit on high grass and weeds in my yard?

Grass and weeds cannot exceed 12" in height.

### **Can the City cut the grass at a vacant or foreclosed property?**

No - The City does not maintain vacant or abandoned property.

A Code Enforcement Officer will attempt to contact the current property owner to bring their property into compliance.

\* An ordinance has been drafted and if passed it would allow the city or its designee to enter a property to resolve minor property maintenance violations

## Land maintenance issues can occur in any part of <u>the city</u>

#### COMMERCIAL



#### RESIDENTIAL



## What is considered an inoperative vehicle?

Any vehicle that has been dismantled, is not capable of being operated on a public street due to missing or inoperable mechanical or electronic parts and does not have a current license plate.

## **Inoperable vehicle storage**



## Where can I store my boat or recreational vehicle on my property?

Recreational vehicles and boats can be stored anywhere on your property within the City.

#### However, they cannot be used as a living quarters.

## **RV storage violation example**

#### BEFORE



AFTER



### Is my neighbor allowed keep chickens within the city limits?

Chickens are permitted within the city. Chickens on residential properties are limited to no more than ten (10) chickens per parcel.

Chickens must be contained to the property of the owner.

# Blighting issues and other violations

## **Dangerous Structures**

#### BEFORE



AFTER



## **Dangerous Structures**

#### BEFORE



#### AFTER



## **Improper use of city trash can**

#### **REFUSE OUTSIDE CONTAINER**



#### OVERFILL AND PROHIBITED REFUSE



## Violations with improperly placed curbside refuse by volume, material, or a combination of issues







## Trash outside container at Apartments or Businesses

#### APARTMENT COMPLEX



#### BUSINESS PARKING LOT



## **Other example of trash outside the dumpster**

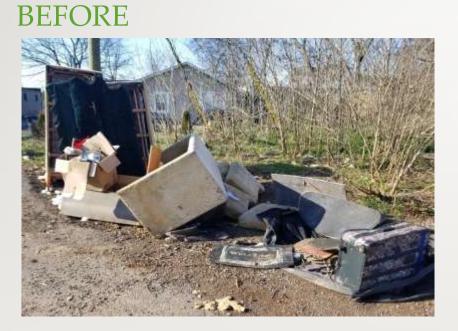
#### BEFORE



AFTER



## Illegal Dumping / Littering



#### AFTER



## Illegal Dumping / Litter





### Illegally posted signs – on poles, trees and/or on the right of way



## Unsafe and Nuisance Swimming Pools



## 2020 Code Enforcement Statistics

## **NEW CASES IN 2020**

## 1291

## NEW CODE VIOLATIONS REPORTS GENERATED IN 2020

## **CLOSED CASES 2020**

## 1316 CODE VIOLATIONS INCIDENTS CLOSED SUCCESSFULLY IN 2020 BY THE VIOLATIONS BEING CORRECTED

## COMMUNITY DEVELOPMENT BLOCK GRANT

The CDBG Program provides annual grants on a formula basis to entitled cities and counties to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for low and moderate income persons.

#### 1664 HOURS INVESTED INTO CDBG IN 2020

## **OPERATION GATEWAY**

#### OPERATION GATEWAY IS A FOCUSED EFFORT TO IDENTIFY AND CORRECT CODE VIOLATIONS ON THE STREET AND HIGHWAYS COMMONLY USED TO ENTER AND LEAVE THE CITY OF DALTON

## 267 HOURS SPENT ON OPERATION GATEWAY PROGRAM

Dalton Police Department Code Enforcement Contact numbers

706-278-9085

<u>Operations Sergeant</u> Sgt. Woody Cantrell ext. 160

Code Enforcement Officers Matt Lane ext. 176 and Ryan Shope ext. 181



# CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting		
Meeting Date:	2-15-21		
Agenda Item:	Ordinance 21-01 Updating Article VI (Nuisances) of Chapter 50 of the City Code		
Department:	Police		
Requested By:	Chief Cliff Cason		
Reviewed/Approved by City Attorney?	Yes		
Cost:	NA		
Funding Source if Not in Budget	NA		
Please Provide A Summary of Your Request, Including Background Information to			

**Explain the Request:** 

Ordinance 21-01 Updating Article VI (Nuisances) of the City Code

### CITY OF DALTON ORDINANCE Ordinance No. 21-01

An Ordinance Of The City Of Dalton To Amend Article VI "Nuisances" Of Chapter 50 "Environment" Of The Revised Code Of Ordinances Of 2001 Of The City Of Dalton By Amending Section 50-179 To Provide For Collection Of The Costs Of Abatement; By Amending Section 50-180 To Provide For Examples Of Nuisances; By Adding Section 50-183 To Provide For The Revocation Of City Licenses; By Adding Section 50-184 To Provide For Summary Abatement Of Nuisances; By Adding Section 50-185 To Provide For The Emergency Abatement Of Nuisances; By Adding Section 50-186 To Provide For Powers Of The Chief Of Police; To Provide An Effective Date; To Repeal All Ordinances Conflicting Therewith; To Provide For Severability; And For Other Purposes.

WHEREAS, the Article VI "Nuisances" of Chapter 50 "Environment" Of The Revised Code

Of Ordinances Of 2001 Of The City Of Dalton has been amended from time to time;

WHEREAS, the Mayor and Council declare that there exists within the city limits of the City

of Dalton nuisances upon private property that endanger and constitute a hazard to the health, safety,

and welfare of the people of the City;

WHEREAS, the City desires to revise and amend Article VI "Nuisances" of Chapter 50 "Environment" to provide clarity and the orderly abatement of nuisances within the City;

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances Of 2001 of the City of Dalton, as amended, is hereby amended by adding Section 50-179 (d) to read as follows:

Sec. 50-179 (d)

(d) In the event the respondent fails to abate the existence or continuance of the nuisance within the time imposed by the court, the City shall be authorized to take all reasonable and necessary actions to abate the nuisance. Costs of the proceedings shall be imposed upon the respondent in all cases wherein the court finds the respondent responsible for the existence or continuance of the nuisance. Upon appropriate findings, the court may order the payment of restitution by the respondent for the actual cost of the abatement. In addition, the cost of abatement shall be a lien upon the subject property until the cost of abatement is paid in full. The City Attorney is authorized to take all reasonable and necessary actions to file said lien. Said lien may be collected as provided for in Article X Dangerous Buildings. The cost of abatement is hereby declared to be a personal debt of the owner of the subject property owed to the City of Dalton and said debt may be collected as provided for the collection of personal debts under state law.

-3-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances

Of 2001 of the City of Dalton, as amended, is hereby amended by revision of Section 50-180 to read

as follows:

Sec. 50-180. – Cause of action; examples of public nuisances.

Conditions or activities occurring on private property that may constitute public nuisances shall include, but not be limited to, the following:

- (1) Stagnant water on premises.
- (2) Any real property on which there has been allowed to accumulate any dead or decaying matter; weeds; vegetation; or any fruit, vegetable, animal or rodent or other unsanitary or unsafe conditions upon premises which is odorous or capable of causing disease or annoyance to the residents, occupants, or the inhabitants of the city.
- (3) The generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of the city.
- (4) Any discharge of pollutants off the real property on which the discharge originates, except pursuant to a valid permit and discharges resulting from fire suppression activities.
- (5) The pollution of public water or the injection of matter into the sewerage system which would be damaging thereto.
- (6) Maintaining a dangerous or diseased animal or fowl.
- (7) Obstruction of a public street, highway or sidewalk without a permit.
- (8) Loud or unusual noises which are detrimental or annoying to the public.
- (9) All walls, trees and buildings that may endanger persons or property.

- (10) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent such activities.
- (11) Unused iceboxes, refrigerators and the like unless the doors, latches or locks thereof are removed.
- (12) Any other condition constituting a nuisance under state law.
- (13) Abandoned vehicles, which are defined as vehicles which are not road worthy, inoperable, do not have current license plates and are not located completely within a fully enclosed, standing and permanent structure.
- (14) Any building, structure, or place used for the purpose of lewdness, prostitution, or other unlawful sexual activity.
- (15) Any building, structure, or place used for the purpose of gang related or drug related activity.
- (16) Any building, structure, or place which, due to dilapidation, age or obsolescence, has defects which increase the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light or sanitary facilities; or where other conditions exist rendering such building, structure, or place unsafe or unsanitary.
- (17) Any building, structure, or other place or location where any activity is conducted, performed, or maintained in violation of local, state, or federal law which constitute a hazard to the health, safety, and welfare of the people of the City.

-4-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances

Of 2001 of the City of Dalton, as amended, is hereby amended by adding Section 50-183 to read as

follows:

Sec. 50-183. – Revocation of city license, permit, etc.

Upon the order of the Mayor, any license, privilege or permit granted by the City of Dalton may be suspended or revoked for the failure to abate the existence or continuance of a public nuisance as ordered by the court or as ordered by the Chief of Police within the time period prescribed for the abatement.

-5-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances

Of 2001 of the City of Dalton, as amended, is hereby amended by adding Section 50-184 to read as

follows:

Sec. 50-184. – Summary abatement of public nuisance.

- (a) The Chief of Police, or his or her designee, is hereby authorized to provide written notice to the owner, occupant, or agent of the subject property that a public nuisance exists upon the subject property. Said notice shall be personally served upon the owner, occupant, or agent. In the event the owner, occupant, or agent cannot not be located for service, the notice shall be served by U.S. mail to the owner of the subject property at the address maintained by the Tax Commissioner of Whitfield County for real property taxes. Said notice shall provide a detailed statement of the conditions constituting the nuisance and shall provide a deadline to abate the existence or continuance of the nuisance.
- (b) In the event the owner, occupant, or agent does not abate the existence or continuance of the nuisance as ordered by the Chief of Police within the time period prescribed for the abatement, then the City shall be authorized to take all reasonable and necessary actions to abate the nuisance. The cost of abatement shall be a lien upon the subject property until the cost of abatement is paid in full. The City Attorney is authorized to take all reasonable and necessary actions to file said lien. Said lien may be collected as provided for in Article X Dangerous Buildings. The cost of abatement is hereby declared to be a personal debt of the owner of the subject property owed to the City of Dalton and said debt may be collected as provided for the collection of personal debts under state law.

-6-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances

Of 2001 of the City of Dalton, as amended, is hereby amended by adding Section 50-185 to read as

follows:

Sec. 50-185. – Emergency abatement of public nuisance.

- (a) The Chief of Police is hereby authorized to determine that the existence or maintenance of a nuisance constitutes an emergency to the health, safety, and welfare of the owner, occupant, or general public. The Chief of Police shall notify the Public Works Director of the existence of an emergency condition requiring abatement. The City, its employees, and agents shall be authorized to take all reasonable and necessary actions to abate the emergency conditions of the nuisance.
- (b) Once the emergency condition has been abated, the Chief of Police, or his or her designee, shall provide written notice to the owner, occupant, or agent of the subject property that an emergency condition existed upon the subject property and shall provide a detailed summary of the emergency conditions and all actions taken by the

City to abate said emergency conditions. Said notice shall be served as provided in Section 50-184.

(c) The cost of abatement shall be a lien upon the subject property until the cost of abatement is paid in full. The City Attorney is authorized to take all reasonable and necessary actions to file said lien. Said lien may be collected as provided for in Article X Dangerous Buildings. The cost of abatement is hereby declared to be a personal debt of the owner of the subject property owed to the City of Dalton and said debt may be collected as provided for the collection of personal debts under state law.

## -7-

Article VI "Nuisances" of Chapter 50 "Environment" of the Revised Code Of Ordinances

Of 2001 of the City of Dalton, as amended, is hereby amended by adding Section 50-186 to read as

follows:

Sec. 50-186. - Powers of Chief of Police.

In the performance of his duties under this article, the Chief of Police shall have the power,

in addition to any others granted in this article, to:

- (a) Investigate the conditions in the city in order to identify the existence or maintenance of public nuisances;
- (b) Enter upon private property for the purposes of making examinations of public nuisances; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (c) Appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this article;
- (d) Delegate any of his functions and powers under this article to such officers and agents as he may designate.

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Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

-9-

#### -10-

This Ordinance shall take effect and be in force following its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Ordinance received its first reading on \_\_\_\_\_\_ and a second reading on \_\_\_\_\_\_. Upon second reading a motion for passage of the ordinance was made by Council member \_\_\_\_\_\_, second by Council member \_\_\_\_\_\_, second by Council member \_\_\_\_\_\_ and upon the question the vote is \_\_\_\_\_\_ aves, \_\_\_\_\_\_ nays and the Ordinance is adopted. CITY OF DALTON, GEORGIA

Attest:

MAYOR

## CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the \_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_.

## CITY CLERK CITY OF DALTON



## CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting		
Meeting Date:	2-15-21		
Agenda Item:	First Reading - Ordinance 21-02 Updating Article VI "Franchise Fees" Of Chapter 118 "Utilities" Of The City Code		
Department:	Finance		
Requested By:	Cindy Jackson		
Reviewed/Approved by City Attorney?	Yes		
Cost:	NA		
Funding Source if Not in Budget	NA		
Please Provide A Summary of Your Request Including Rackground Information to			

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Ordinance 21-02 Updating Article VI "Franchise Fees" Of Chapter 118 "Utilities" Of The Dalton City Codes

### CITY OF DALTON ORDINANCE Ordinance No. 21-02

An Ordinance Of The City Of Dalton To Adopt Article VI "Franchise Fees" Of Chapter 118 "Utilities" Of The Revised Code Of Ordinances Of 2001 Of The City Of Dalton To Provide For The Collection Of Franchise Fees For The Use Of City Property And Right-Of-Way For Electrical Services; To Provide An Effective Date; To Repeal All Ordinances Conflicting Therewith; To Provide For Severability; And For Other Purposes.

WHEREAS, Chapter 118 "Utilities" Of The Revised Code Of Ordinances Of 2001 Of The City Of Dalton has been amended from time to time;

WHEREAS, the City desires to revise and amend Chapter 118 "Utilities" to provide for the collection of franchise fees for the use of City property and right-of-way for electrical services pursuant to the provisions of the City Charter Article IV, Section 4-8 (dd) and O.C.G.A. §36-34-2(7);

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

Chapter 118 "Utilities" of the Revised Code Of Ordinances Of 2001 of the City of Dalton, as amended, is hereby amended by adoption of Article VI "Franchise Fees" and shall read as follows:

Chapter 118 Utilities

Article VI – Franchise Fees

Section 118 - 187 through 118 - 99. - Reserved.

Division 1 – Generally

Sec. 118-200. - Permit and franchise fee required prior to installation of and continued maintenance of poles, pipes, etc., on public roads or alleys.

City of Dalton Ordinance 21-02 Page **1** of **11** 

- (a) No person or entity shall install, construct, maintain or cause to be installed, constructed or maintained any pipe, main, conduit, cable, wire, pole, tower, traffic or other signal and other equipment, facilities, appliance, receptacle or sign, in, on, along, over or under the public roads or alleys of the city which are a part of the city's road system without first obtaining a permit therefor and paying franchise fees hereafter provided; provided, however, that such franchise fees shall not be in excess of those as may be authorized by any state or federal regulatory agency where applicable.
- (b) No permit for a franchise shall be granted except by adoption by the mayor and city council of a franchise ordinance pursuant to this article. Within such ordinance, a franchise fee shall be established for the use of pipes, mains, conduits, cables, wires, poles, towers and public rights-of-way.
- (c) For each sign and each receptacle on the public right-of-way, excepting those used in connection with the collection and delivery of the United States mail, there is assessed a fee in the amount established by action of the city council, a copy of which is on file in the office of the city clerk.

Sec. 118-201. - Right to select electrical supplier.

Nothing contained in this Article shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

Sec.118-202. - Amendments.

The City may enter into such additional agreements as the City and any electric service franchisee may deem reasonable and appropriate; provided, however, that such agreements shall not be inconsistent with the terms and conditions of the franchise granted in this Article, shall not extend beyond the term of the franchise, and shall be enforceable separate and apart from the franchise.

Sec. 118-203. - Acceptance.

The electric service franchisee shall, within 90 days from the approval of the ordinance from which this Article is derived, file the electric service franchisee's written acceptance of the franchise granted in this ordinance with the City Clerk, so as to form a contract between the electric service franchisee and the City.

Sec. 118-204. - Conflicting provisions.

All laws and ordinances, and all agreements between the electric service franchisee and the City with respect to the electric service franchisee's use of the City's streets, alleys, and public places, in actual conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.

Secs. 118-205 through 118-209. - Reserved.

Division 2. – North Georgia Electric Membership Corporation

City of Dalton Ordinance 21-02 Page **2** of **11**  Sec. 118-210. - Grant of franchise.

The authority, right, permission and consent are hereby granted to North Georgia Electric Membership Corporation (hereinafter sometimes referred to as "North Georgia EMC"), its successors, lessees and assigns (the "Company"), subject to the terms and conditions set forth hereinafter for a period of 35 years, to occupy and use the streets, alleys and public places of the City within the present and future limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus (collectively, the "Facilities") for any business or purpose, including transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to ensure safe and efficient service.

Sec. 118-211. - Payment of franchise fees required.

- (a) Beginning March 1, 2021, the use by North Georgia EMC of the streets, alleys, public places and other property of the City for the operation of the Facilities, and the grant of the requisite street franchise rights, is expressly conditioned upon payment of franchise fees pursuant to this chapter, and continued use and occupancy of such City property for said purpose without payment of such franchise fees is unlawful, and the City shall be entitled to enforce compliance with this chapter by appropriate proceeding at law or in equity.
- (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the maximum rate authorized by state law.

Sec. 118 - 212. - Terms and conditions.

The rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions:

(a) The Company shall pay to the City (1) on or before the first day of March in each year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to all of the Company's customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following granting of this franchise and ending on December 31 thereafter and (2) on or before the first day of March of each year thereafter during the term oof this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential, commercia, and industrial rate schedules (as so prescribed) within the corporate limits of the City during each preceding calendar year, on condition that in the event the City shall grant to any other entity the fright to use and occupy the City's property and right-of-way for like purposes, such use and

occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

- (b) All payments shall be accompanied by a report prepared by the Company showing the volume of gross sales for all service classifications (residential, commercial, industrial, etc.) for the preceding term.
- (c) Upon request by the City, which request shall not be made more often than once every three years, Company shall cause an independent audit to be performed of its franchise fee payments for any period previously un-audited. Such audit shall be at Company's expense. A request by the City under this provision shall not prevent the City from undertaking its own audits, at times deemed appropriate by the City, of Company's performance under this article and its franchise for any period previously un-audited.
- (d) The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account, other than ad valorem taxes on property and license taxes on the sale of home appliances, shall operate to reduce to the extent of such tax, fee, charge or imposition the amount due from the percentage of gross sales as provided in subsection (a) of this section.
- (e) The Company shall fully protect, indemnify and save harmless the City from all damages to person or property caused by the construction, maintenance, operation or extension of poles, wires or other apparatus, or conditions of streets, alleys or public places resulting therefrom, for which the said City would otherwise be liable.
- (f) The Company shall, in constructing, maintaining, operating and extending its poles, wires and other apparatus, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
- (g) The grant of the rights, permission and consents by the City to the Company contained in this chapter are specifically conditioned upon the payment of all sums due the City in accordance with the rate, conditions and payment dates set forth in subsection (a) of this section, and failure by the Company to timely pay the franchise fees required by said subsection (a) of this section shall constitute a forfeiture of all rights granted by this Division. The Company's continued use and occupancy of the streets, alleys and public places of the City for the aforesaid purposes shall evidence the Company's acceptance of the franchise granted hereby and shall render the Company liable for payment of all fees required by subsection (a) of this section. In the event of forfeiture for failure to comply with such requirements, the Company shall nevertheless remain liable for all sums accrued until such time as the streets are vacated due to such forfeiture.
- (h) For the purposes of this section, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of the ordinance from which this article is derived) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following:

- (i) Electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines");
- (ii) Poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures");
- (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures;
- (iv) Lines, wires, cables, or conductors installed in concrete-encased ductwork; or
- (v) Network underground facilities.
- (i) In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this subsection (i) shall not affect the amounts paid or to be paid to the City under the provisions of subsection (a) of this section. Notwithstanding the foregoing provisions of this subsection (i), the Company shall not be obligated to relocate, at its expense, any of the following:
  - (i) Distribution Facilities that are located on private property (which shall include those located on easements acquired by the Company from persons or entities other than the City) at the time relocation is requested or demanded;
  - (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes);
  - (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes;
  - (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation; or
  - (v) Distribution Facilities that do not obstruct or interfere with plans for road widening, the creation of new turn lanes, or acceleration and deceleration lanes.
- (j) The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate City projects in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to:
  - Both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization); and

- (ii) Both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).
- (k) With regard to each project undertaken by or on behalf of the City for which the Company is not obligated, in accordance with subsection (i) of this section, to pay the cost of relocation, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project.
- Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, on the effective date of this franchise, are not both:
  - (i) Within the City limits on the effective date; and
  - (ii) Depicted as being within the City limits on the maps provided to Company and said map shall be available for inspection during business hours in the office of the City Clerk.
- (m) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, after the effective date of this franchise, are annexed to the corporate limits of the City before 90 days after the Company receives written notice from the City that the City intends to annex (or has already annexed) the territory in which said customers are located. To be effective, any such notice must include an electronic map of the annexed areas in a format reasonably acceptable to Company.

Sec. 118-213 through 118-219. - Reserved.

Division 3. - Georgia Power

Sec. 118-220. - Grant of franchise.

The authority, right, permission and consent are hereby granted to North Georgia Electric Membership Corporation (hereinafter sometimes referred to as "North Georgia EMC"), its successors, lessees and assigns (the "Company"), subject to the terms and conditions set forth hereinafter for a period of 35 years, to occupy and use the streets, alleys and public places of the City within the present and future limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus (collectively, the "Facilities") for any business or purpose, including transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to ensure safe and efficient service.

Sec. 118-221. - Payment of franchise fees required.

- (a) Beginning March 1, 2021, the use by North Georgia EMC of the streets, alleys, public places and other property of the City for the operation of the Facilities, and the grant of the requisite street franchise rights, is expressly conditioned upon payment of franchise fees pursuant to this chapter, and continued use and occupancy of such City property for said purpose without payment of such franchise fees is unlawful, and the City shall be entitled to enforce compliance with this chapter by appropriate proceeding at law or in equity.
- (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the maximum rate authorized by state law.
- Sec. 118 222. Terms and conditions.

The rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions:

- (a) The Company shall pay to the City (1) on or before the first day of March in each year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to all of the Company's customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following granting of this franchise and ending on December 31 thereafter and (2) on or before the first day of March of each year thereafter during the term oof this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential, commercia, and industrial rate schedules (as so prescribed) within the corporate limits of the City during each preceding calendar year, on condition that in the event the City shall grant to any other entity the fright to use and occupy the City's property and right-of-way for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.
- (b) All payments shall be accompanied by a report prepared by the Company showing the volume of gross sales for all service classifications (residential, commercial, industrial, etc.) for the preceding term.
- (c) Upon request by the City, which request shall not be made more often than once every three years, Company shall cause an independent audit to be performed of its franchise fee payments for any period previously un-audited. Such audit shall be at Company's expense. A request by the City under this provision shall not prevent the City from undertaking its own audits, at times deemed appropriate by the City, of Company's performance under this article and its franchise for any period previously un-audited.
- (d) The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account, other than ad valorem taxes on property and license taxes on the sale of home appliances, shall operate to reduce to the extent of such tax, fee, charge or imposition the amount due from the percentage of gross sales as provided in subsection (a) of this section.

- (e) The Company shall fully protect, indemnify and save harmless the City from all damages to person or property caused by the construction, maintenance, operation or extension of poles, wires or other apparatus, or conditions of streets, alleys or public places resulting therefrom, for which the said City would otherwise be liable.
- (f) The Company shall, in constructing, maintaining, operating and extending its poles, wires and other apparatus, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
- (g) The grant of the rights, permission and consents by the City to the Company contained in this chapter are specifically conditioned upon the payment of all sums due the City in accordance with the rate, conditions and payment dates set forth in subsection (a) of this section, and failure by the Company to timely pay the franchise fees required by said subsection (a) of this section shall constitute a forfeiture of all rights granted by this Division. The Company's continued use and occupancy of the streets, alleys and public places of the City for the aforesaid purposes shall evidence the Company's acceptance of the franchise granted hereby and shall render the Company liable for payment of all fees required by subsection (a) of this section. In the event of forfeiture for failure to comply with such requirements, the Company shall nevertheless remain liable for all sums accrued until such time as the streets are vacated due to such forfeiture.
- (h) For the purposes of this section, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of the ordinance from which this article is derived) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following:
  - (i) Electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines");
  - (ii) Poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures");
  - (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures;
  - (iv) Lines, wires, cables, or conductors installed in concrete-encased ductwork; or
  - (v) Network underground facilities.
- (i) In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this subsection (i) shall not affect the amounts paid or to be paid to the City under the provisions of subsection (a) of this section. Notwithstanding the foregoing

provisions of this subsection (i), the Company shall not be obligated to relocate, at its expense, any of the following:

- (i) Distribution Facilities that are located on private property (which shall include those located on easements acquired by the Company from persons or entities other than the City) at the time relocation is requested or demanded;
- (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes);
- (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes;
- (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation; or
- (v) Distribution Facilities that do not obstruct or interfere with plans for road widening, the creation of new turn lanes, or acceleration and deceleration lanes.
- (j) The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate City projects in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to:
  - (i) Both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization); and
  - (ii) Both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).
- (k) With regard to each project undertaken by or on behalf of the City for which the Company is not obligated, in accordance with subsection (i) of this section, to pay the cost of relocation, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project.
- (1) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, on the effective date of this franchise, are not both:
  - (i) Within the City limits on the effective date; and
  - (ii) Depicted as being within the City limits on the maps provided to Company and said map shall be available for inspection during business hours in the office of the City Clerk.

(m) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, after the effective date of this franchise, are annexed to the corporate limits of the City before 90 days after the Company receives written notice from the City that the City intends to annex (or has already annexed) the territory in which said customers are located. To be effective, any such notice must include an electronic map of the annexed areas in a format reasonably acceptable to Company.

Sec. 118-223 through 118-229. – Reserved.

### -3-

Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

-4-

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

#### -5-

This Ordinance shall take effect and be in force following its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Ordinan	ace received its first reading on	and a second
reading on	Upon second reading a motion for pas	sage of the ordinance
was made by Council member	, second by	V Council member
	and upon the question the vote is	
ayes,	_ nays and the Ordinance is adopted.	

## CITY OF DALTON, GEORGIA

Attest:

MAYOR

CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY CLERK CITY OF DALTON