

**CITY OF KENNESAW  
GEORGIA**

**ORDINANCE NO. 2010-07, 2010**

**AN ORDINANCE TO AMEND APPENDIX A “ZONING,” ARTICLE VIII  
“REGULATIONS AND USE REQUIREMENTS BY DISTRICT,” SECTION 881 “HI  
HEAVY INDUSTRIAL,” SPECIFICALLY SECTIONS 881.3, 881.4 and 881.5 OF THE  
CODE OF ORDINANCES OF THE CITY OF KENNESAW**

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

**WHEREAS**, the Mayor and City Council of the City of Kennesaw are charged with the protection of the public health, safety, and welfare of the citizens of Kennesaw; and

**WHEREAS**, the State of Georgia authorizes the City of Kennesaw to exercise its regulations where it sees fit to maintain the safety and welfare of the citizens; and

**WHEREAS**, the City of Kennesaw is concurrently adopting with this Ordinance, a comprehensive licensing ordinance to regulate sexually oriented businesses; and

**NOW THEREFORE**, to accomplish the foregoing, the Mayor and the City Council of the City of Kennesaw while in regular session on May 17, 2010 at 6:30 p.m., pursuant to their authority, do hereby amend Sections 881.3 (permitted uses) 881.4 (special exception uses) and 881.5 (Use Limitations) of the Code of Ordinances of the City of Kennesaw as follows:

**Section 1:**

*881.3 Permitted uses.* Within any HI heavy industrial district, the following uses shall be permitted:

- (1) Agricultural produce stands.
- (2) Ambulance services.
- (3) Ambulance services, if accessory to hospitals or funeral homes.
- (4) Ancillary retail sales.
- (5) Animal hospitals.
- (6) Assembly halls.
- (7) Automobile, truck, and trailer lease and rental facilities (principal or accessory) (SLUP/SE).
- (8) Automobile and truck sales and service facilities (SLUP/SE).
- (9) Automotive paint and body repair shops (such uses shall not be established upon a lot which is either adjacent to or directly across the street from any residential district).
- (10) Automotive parking lots or garages.
- (11) Automotive repair and maintenance facilities.
- (12) Automotive upholstery shops.
- (13) Aviation airports (private).
- (14) Banks/financial institutions with drive-in establishments and/or automated transfer machines.
- (15) Boat sales and service establishments.
- (16) Breeding and boarding kennels.

- (17) Building materials stores.
- (18) Bus stations.
- (19) Bus stations for freight.
- (20) Car washes.
- (21) Clinics.
- (22) Clubs or lodges (noncommercial).
- (23) Colleges and universities, including but not limited to research training facilities (private).
- (24) Commercial greenhouses and plant nurseries.
- (25) Community fairs.
- (26) Composting plants (SLUP/SE required--See section 2101).
- (27) Contractors (general, heavy, special).
- (28) Corporate or administrative offices for any permitted uses within this district.
- (29) Dairies.
- (30) Designated recycling collection locations.
- (31) Dry cleaning plants.
- (32) Electrical supply stores.
- (33) Emissions/inspection stations.
  - a. Subject to architectural standards section 690.
  - b. Subject to overall building coverage for property.
  - c. Subject to parking requirements in section 710.
  - d. Must maintain 35 feet setback from all property lines.
- (34) Executive golf courses.
- (35) Farm equipment stores/repair establishments.
- (36) Freight terminals.
- (37) Fuel and ice dealers.
- (38) Full service gasoline stations.
- (39) Golf courses (18-hole regulation, public and private; par 3).
- (40) Group homes.
- (41) Half-way house.
- (42) Heavy automotive repair establishments.
- (43) Heavy automotive repair services and trade shops.
- (44) Helicopter landing areas.
- (45) In-home day care.
- (46) Laundry and dry cleaning pick-up establishments.
- (47) Light automotive repair establishments.
- (48) Light manufacturing establishments.
- (49) Linen and diaper services.
- (50) Livestock, nondomestic and wild animals, and poultry.
- (51) Machine shops.
- (52) Medical and dental laboratories (no limitations other than must have required federal and state permits).
- (53) Newspaper publishing facilities.
- (54) Nonautomotive repair service establishments.
- (55) Office service and supply establishments.
- (56) Outdoor commercial racing (motorcycles, automobiles, trucks, tractors and motorized vehicles)--SLUP/SE required.
- (57) Outdoor golf driving ranges.
- (58) Parking for vehicles.
- (59) Plumbing and/or heating equipment dealers.

- (60) Printing, publishing and lithography establishments.
  - (61) Private parks.
  - (62) Pro shops, if accessory to driving ranges/golf courses.
  - (63) Radio and television stations.
  - (64) Radio, television, and other communication towers and antennas (SLUP required--See sections 2101 and 2002).
  - (65) Rail stations.
  - (66) Railroad car classifications yards.
  - (67) Railroad stations for freight.
  - (68) Recreation grounds other than tennis courts and golf courses.
  - (69) Research and development centers.
  - (70) Research testing laboratories.
  - (71) Reupholstery and furniture repair facilities.
  - (72) Sawmills (temporary).
  - (73) Sexually oriented businesses.
  - ~~(73)~~ (74) Shelters (homeless).
  - ~~(74)~~ (75) Signs and outdoor advertising facilities.
  - ~~(75)~~ (76) Taxi stands and dispatching agencies.
  - ~~(76)~~ (77) Temporary uses.
  - ~~(77)~~ (78) Tire retreading and recapping facilities.
  - ~~(78)~~ (79) Trailer salesrooms and sales lots.
  - ~~(79)~~ (80) Transportation equipment storage and maintenance facilities.
  - ~~(80)~~ (81) Truck terminals.
  - ~~(81)~~ (82) Utility facilities (private).
  - ~~(82)~~ (83) Vocational schools (commercial).
  - ~~(83)~~ (84) Warehouse and storage facilities.
  - ~~(84)~~ (85) Wholesale sales offices.
  - ~~(85)~~ (86) Wholesale trade and distribution facilities, including packing of wholesale commodities for distribution:
    - (a) Unless in a district in which manufacturing is permitted, no fabricating of goods to be sold shall be permitted.
    - (b) Unless in a district in which heavy manufacturing is permitted, no wholesaling activity shall be permitted which processes the goods handled in a manner that produces liquid or solid waste or noise, odor, fumes or dust which can be detected beyond the walls of the building in which such wholesaling activity is housed.
  - ~~(86)~~ (87) Wholesale trade offices in conjunction with office showrooms.
  - ~~(87)~~ (88) Self service storage facilities.
- (Ord. No. 1997-03, 2-17-97; Ord. No. 2004-41, § 1, 8-16-04)

## Section 2:

*881.4 Special exception uses.* Within any HI heavy industrial district, the following uses shall be permitted by special exception:

- ~~(1) Adult entertainment. See standards for adult entertainment.~~
- (2) Amusement centers subject to [sic]
- (3) Amusement centers subject to the following minimum requirements:
  - (a) Minimum acreage of five acres;
  - (b) Such use shall not be located closer than 500 feet from any school property;
  - (c) Such use shall not be located closer than 200 feet from any residential property line; and

- (d) Overall parking and landscape plan to be approved by city staff (said plan will be provided for safe, efficient vehicles and pedestrian circulation and aesthetics).
- (43) Asphalt plants/concrete plants subject to the following minimum standards:
  - (a) Special land use permit;
  - (b) Compliance with all applicable state and federal laws;
  - (c) All necessary state and federal permits;
  - (d) Spill containment plan to be approved by city staff;
  - (e) Minimum acreage to be five acres;
  - (f) No use shall be closer than 1,000 feet from any residential dwelling or school;
  - (g) Hours of operation shall be limited to daylight hours; and
  - (h) Noise abatement and air pollution abatement plans to be approved by city staff.
- (54) Automobile salvage and wrecking yards subject to the following minimum requirements:
  - (a) Special land use permit;
  - (b) Such use shall be enclosed by a fence or wall not less than eight feet in height which provides visual screening;
  - (c) No such activity may be conducted within 100 feet of any property line or 200 feet of any property zoned or used for residential purposes;
  - (d) The incidental sale of auto parts removed from cars on the site shall be permitted.
- (65) Automobile storage yards and wrecker services for damaged and confiscated vehicles subject to the following minimum requirements:
  - (a) Such use shall be enclosed by a fence or wall not less than eight feet in height which provides visual screening;
  - (b) No dismantling, repair, or other such activity shall be conducted;
  - (c) Such use shall be located at least 40 feet from any residential district or use; and
  - (d) Such automobiles shall not be held longer than provided by state and city law.
- (76) Biomedical waste disposal facility/hazardous waste sites subject to the following minimum requirements:
  - (a) Spill containment plan to approved by city staff;
  - (b) Such use shall not be located closer than 1,000 feet from any residential dwelling or school;
  - (c) Special land use permit;
  - (d) Such use shall be carried on within an enclosed building, with no outside storage of any materials or biomedical waste except for vehicles used for the operation;
  - (e) All necessary state and federal permits;
  - (f) Compliance will all applicable state and federal laws;
  - (g) Minimum acreage to be five acres;
  - (h) Must be designed with an impervious liner; and
  - (i) Must have on-site water purification system which returns water to potable condition.
- (87) Cemeteries.
- (98) Churches, chapels, temples, synagogues, and other places of worship (including accessory cemeteries and schools).
- (109) Coliseums, stadiums, and convention centers (privately owned) with the following minimum requirements:
  - (a) Minimum acreage of ten acres;
  - (b) Special land use permit;
  - (c) Traffic and parking plan to be approved by the city and the director of the Cobb County Department of Transportation;
  - (d) Hours of operation to be approved by the city council at time of special land use permit public hearing; and

- (e) Noise abatement plan to be approved by the city council at time of special land use permit public hearing.
- ~~(11)~~10) Crematories, human and animal, with the following minimum requirements:
  - (a) Minimum lot size of two acres;
  - (b) When abutting any residential property line a 50-foot natural/landscaped buffer shall be approved by city staff.
- ~~(12)~~11) Drive-in theaters with the following minimum requirements:
  - (a) Minimum acreage of two acres;
  - (b) Driving and parking areas shall be paved;
  - (c) Theater screen, projection booth, or other buildings shall be set back not less than 50 feet from any property line (unless front setback is greater);
  - (d) Theater screen shall not be visible from an expressway, arterial, or major collector roadway; and
  - (e) No damaged or confiscated vehicles shall be stored on-site.
- ~~(13)~~12) Hazardous waste site--SLUP required (See section 2101).
- ~~(14)~~13) Heavy manufacturing establishments subject to the following minimum requirements:
  - (a) Special land use permit;
  - (b) Such use shall not be located closer than 500 feet from any residential property line;
  - (c) Such use shall be carried on entirely within an enclosed building, with no outside storage except for vehicles used for the operation;
  - (d) All necessary state and federal permits; and
  - (e) Compliance to all applicable state and federal laws.
- ~~(15)~~14) Mausoleums.
- ~~(16)~~15) Mining subject to the following minimum requirements:
  - (a) Removal or extraction of dirt, sand, and soil;
  - (b) The removal area shall be completely enclosed by a fence not less than six feet in height when considered necessary by city staff;
  - (c) Drainage plans and a plan for the development of the site when the removal is completed shall be submitted with the application for a development permit;
  - (d) Such uses shall not be established within 500 feet of a residential use or 200 feet of any other use;
  - (e) This section shall not prohibit the removal of earth and rock and filling and grading in any district done for land development purposes;
  - (f) Removal or extraction of rock and gravel;
  - (g) The removal area shall be sealed by fencing or grading or other device from general public access; all entrances shall be fenced and locked during nonbusiness hours;
  - (h) Drainage plans and a plan for the development of the site when the removal is completed shall be submitted with the application for a development permit;
  - (i) The operational and removal area of such uses shall not be established within 4,000 feet of a residential use or 2,000 feet of any other use; and
  - (j) No mining shall be allowed except after advertisement of a public hearing by the board of appeals for the purpose of determining whether or not any adverse effect would result to surrounding property owners and whether or not a nuisance, as defined by Georgia law, would be created.
- ~~(17)~~16) Other facilities for disposal of the deceased.
- ~~(18)~~17) Petroleum or bulk storage facilities/chemical plants or storage facilities subject to the following minimum standards:
  - (a) Special land use permit;
  - (b) Compliance with all applicable state and federal laws;

- (c) All necessary state and federal permits;
  - (d) Spill containment plan must be approved by city staff;
  - (e) Minimum acreage to be five acres;
  - (f) No use shall be located closer than 1,000 feet from any residential dwelling or school;
  - (g) Hours of operation shall be limited to daylight hours;
  - (h) Noise abatement and air pollution abatement plans to be approved by city staff; and
  - (i) Fire prevention, evacuation, and safety plan to be approved by the fire marshal.
- (1918) Private community centers.
- (2019) Private landfills/composting centers/recycling centers subject to the following minimum requirements:
- (a) Special land use permit;
  - (b) All necessary state and federal permits;
  - (c) Compliance with all applicable state and federal laws;
  - (d) Such facilities shall only be allowed in a heavy industrial zoning district provided that the commission may grant a variance for a fill of specific natural land depression and further provided such fill shall not include garbage or other materials subject to decomposition;
  - (e) Such facilities shall be approved by the city council after public hearing. Both a development permit from the engineering department and written approval of the county health department shall be issued before any landfill operation begins;
  - (f) Such facilities shall be allowed only in areas incapable of development without landfill operations as determined by the engineering department.
  - (g) No hazardous wastes defined by state and federal law shall be disposed or discharged into the landfill;
  - (h) No garbage shall be disposed of within 2,000 yards of a public highway, a residence, or gathering place unless approved by the city council;
  - (i) Truck traffic routes and entrances to the facility shall be approved by the engineering department;
  - (j) The sanitary landfill site must be accessible without travel over residential streets;
  - (k) All sanitary landfills shall have and keep on their premises in good working order a crawler-type tractor equipped with either a straight blade bulldozer, an angle blade bulldozer, a scraper (eight cubic yards or larger), a front end loader, a bull clam, or other attachments of a similar nature. The combined weight of such tractor and accessories as herein set forth shall be not less than 18,000 pounds;
  - (l) All sanitary landfills hereafter established or operated shall be enclosed with a fence at least six feet high with openings therein not more than those in two-inch mesh wire or some other similar fencing materials or device. Such fencing shall be adequate to prevent paper and similar or related refuse from blowing from the landfill onto neighboring property;
  - (m) All sanitary landfills shall have an operator in attendance at all times when the fill is in use, and such fill must be barricaded when closed to the public;
  - (n) Any changes in the normal drainage of the property upon which the sanitary fill is located shall be accommodated by storm sewers as necessary to properly care for drainage; such storm sewers shall be installed at the expense of the user;
  - (o) All operators of sanitary landfills must pack and cover daily all materials placed thereon with at least six inches of earth in such a manner as to prevent fires and meet any and all other requirements of the fire code. All completed landfills must be covered with at least two feet of earth. Burning of any kind of refuse on said landfill is prohibited; and



- (p) This section shall not prohibit the dumping for disposal by burial of dry waste building materials concurrently with and on the same property as a structure under construction. Such waste shall be covered with at least two feet of earth before occupancy of the structure, but no such waste may be buried within 20 feet of any structure, drainage easement or drainfield.

(2120) Private schools of general and special education.

881.5 *Use limitations.* Within any HI heavy industrial district, the following use limitations apply:

- (1) Maximum floor area ratio of 0.5 for office uses and 0.75 for industrial uses;
- (2) All refuse and designated recycling collection locations facilities must be contained within completely enclosed facilities;
- (3) No uses that exceed state and federal guidelines for allowable emissions and discharge of effluents into the air, water, and soil;
- (4) No uses that create unabated noise creating a nuisance as defined under Georgia law; and
- (5) In the event potentially hazardous materials or chemicals are used on the premises or pollutants result from the operation hereunder, a spill containment plan shall be approved by city staff.

(6) Sexually oriented businesses:

(a) Purpose; Rationale and Findings: It is the purpose of this section to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Mayor and City Council, including, but not limited to evidence from Fulton County, Georgia (2010); St. Mary's, Georgia (1996); Sandy Springs, Georgia (2008); Adam's County, Colorado (1987); New York, New York (1993); Indianapolis, Indiana (1984); Dallas, Texas (1997); Oklahoma City, Oklahoma (1986); Hamilton County, Tennessee (1997); Amarillo, Texas (1977); Austin, Texas (1986); Phoenix, Arizona (1979); Manatee County, Florida (1987); City of Garden Grove, California (1991); Fort Worth and Dallas, Texas (2004); Los Angeles, California (2007); Minnesota (1989); New York (1994); City of St. Cloud, Minnesota (1994); City of Whittier, California (1978); Los Angeles, California (1977); an article by secondary effects experts, Dr. Richard McCleary, Ph.D. and Alan Weinstein, J.D.; transcripts from public hearings from other jurisdictions detailing first hand accounts of secondary effects occurring in and around sexually oriented businesses, including, but not limited to: Sandy Springs, Georgia (2005); Rome, Georgia (1995); Gwinnett County, Georgia (2001) and based on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, U.S. 560

(1991); California v. Laure, 409 U.S. 109 (1972); and Artistic Entertainment, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003); Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Pryor, 240 F.3d 944 (11th Cir. 2001); Williams v. A.G. of Alabama, 378 F.3d 1232 (11th Cir. 2004); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251 (11th Cir. 1999); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 200); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998 ); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 (11th Cir. 2002); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Grand Faloan Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); Gammon v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Flanigans Enterprises, Inc. of Georgia v. Fulton County, Georgia, 2010 WL 520542 (11<sup>th</sup> Cir. 2010); Fairfax MKI, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); Sewell v. Georgia, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978) (sexual devices); Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 (Ga. Ct. App. 2004); Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 (2000); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 (1998); World Famous Dudley's Food & Spirits, Inc. v. City of College Park, 265 Ga. 618 (1995); Airport Bookstore, Inc. v. Jackson, 214 (1978), the Mayor and City Council find:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Based upon the experience of other urban counties and municipalities, which experiences the Mayor and City Council finds are relevant to the problems faced by the city, and which do not vary greatly among generally comparable communities within this country, the Mayor and City Council finds that public nudity, under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in adult cabarets begets criminal behavior and tends to create undesirable community conditions. The Mayor and City Council find that nudity and the depiction thereof, coupled with alcohol in public places, encourages undesirable behavior and is not in the interest of public health, safety, and welfare. The Mayor and City Council have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon sexually oriented businesses in relation to the consumption of alcohol on premise and in relation to their proximity to alcohol licensees.
- (3) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (4) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this section, exists independent of any comparative analysis between sexually oriented and non-sexually-



oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this section is reasonably believed to be relevant to said secondary effects.

(b) Sexually oriented businesses are permitted only in the HI zoning district.

(c) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless said sexually oriented business is at least 250 feet from another sexually oriented business. For purposes of measuring the distance imposed by this subparagraph, the measurement shall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure on which the applicant is located to the primary point of pedestrian entry of the structure of the other sexually oriented business.

(d) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless same is at least 500 feet from a church building, school building, governmentally owned and operated building, library building, civic center building, public park, hospital building, community club building, prison building or any residence (sensitive uses). Measurement. For the purpose of measuring the distance imposed under this subparagraph, measurement shall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure in which the applicant is located to the primary point of pedestrian entry of the structure of the sensitive use. If there is no structure on the parcel comprising the sensitive use, then the point of measurement is to the closest point on a boundary line of any parcel comprising the sensitive use. To the extent that there is a conflict between the definition of a sensitive use as defined in the City's zoning ordinance and as defined in the City's licensing ordinance to regulate sexually oriented businesses, the definition as contained in the licensing ordinance shall control.

(e) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless said sexually oriented business is at least 500 feet from a business licensed to sell alcohol on the premises. For purposes of measuring the distance imposed by this subparagraph, the measurement shall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure on which the applicant is located to the primary point of pedestrian entry of the alcohol licensee.

Note: Required buffers may be included within required setbacks; however, in such case that the required buffer is greater than the required setback, the required buffer shall be adhered to.

Additionally, necessary private utilities and/or access drives may be allowed through, over or across a landscaped buffer. Any such uses which are proposed through, over, or across a designated, undisturbed buffer must be approved pursuant to an original site plan or site plan modification.

Section 3: It is the intention of the Mayor and Council, and is it hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, the City of Kennesaw, Georgia. All ordinances or parts of ordinances in conflict herewith are repealed.

Section 4: If any clause, paragraph, phrase, section, sentence, or word of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect any of the remaining clauses, paragraphs, phrases, sections, sentences, or words of this ordinance.

PASSED AND ADOPTED by the Kennesaw City Council on this 17<sup>th</sup> day of May, 2010.

ATTEST

CITY OF KENNESAW

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Debra Taylor, City Clerk

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Mark Mathews, Mayor

(Seal)