

Mayor and Council

700 Doug Davis Drive  
Hapeville, GA 30354

August 2, 2016

7:00 PM

Agenda

1. Call To Order

2. Roll Call

Mayor Alan Hallman  
Alderman at Large Ruth Barr  
Councilman at Large Michael Randman  
Councilman Ward I Joshua Powell  
Councilman Ward II Diane Dimmick

3. Welcome

4. Pledge Of Allegiance

5. Invocation

6. Presentations

6.I. Years Of Service

- Rick Jenkins, Fire Department, 20 Years
- Leonardo Marquez, Community Service, 20 Years
- Lee Sudduth, Community Service, 20 Years

6.II. Family Life Ministries - Jane Gunter

6.III. Emory Cares Award - Fire Department

7. Public Hearing

7.I. Millage Rate 16.61

**Background**

As you know, Council adopted the City Budget on final reading, June 21, 2016. The adopted Budget for FY 2016-17 contained no property tax rate increase with a recommended rate of \$16.61 mills, same as last FY. This rate has been advertised as required and is ready for adoption by Council. This is the first of three (3) hearings for that purpose.

In closing, staff is still working closely with the Fulton County Property Appraiser to ensure the updated accuracy of the 2016 Tax Digest. At this point in time staff projects that the General Fund millage of 16.61 Mills will generate approx. \$4.6M. The budgeted estimate was \$4.6M.

Should you have any questions, please feel free to contact the City Manager's Office.

Staff Comment  
Public Comment  
Mayor and Council Comment

Documents:

[FIVE YEAR HISTORY 2016.PDF](#)

7.II. Special Tax District 1.0 Millage Rate

**Background**

Council instructed staff to develop a Special District for the purpose of securing special fire equipment. This district applies to buildings of four (4) or more stories in the City. The rate recommended and advertised is 1.0 Mills. This rate is now also ready for renewal. The new Fire equipment has now been purchased and placed into service.

In closing, staff is still working closely with the Fulton County Property Appraiser to ensure the updated accuracy of the 2016 Tax Digest.

The Special District Tax of 1 Mills for Fire will generate an estimated \$90,000 in revenues. A list of properties included in the District has also been provided for your information.

Should you have any questions, please feel free to contact the City Manager's Office.

Staff Comment

Public Comment

Mayor and Council Comment

Documents:

[FIVE YEAR HISTORY 2016.PDF](#)

7.III. Consideration And Action On Ordinance 2016-18 Extended Stay Ordinance

**Background**

Council tabled this item until July 19, 2016 to allow the Planning Commission (PC) to evaluate and discuss this item. Staff has now reviewed the attached Ordinance with the Planning Commission and the Planning Commission's recommendations are attached. The PC supported the attached version (as red lined) and staff concurs as well. In addition, staff would also like to request that Council entertain a proposal for a new Extended Stay project near the existing Staybridge location off Norman Berry. Representatives from a project proposer plan to be present and review the \$10-12M dollar facility that would be constructed if Council were to adopt the proposed Ordinance. Such a project would obviously be of great interest to the City and improve our existing tax base.

**During first reading Council asked several questions and desired that staff clarify certain language. Staff is still working on those changes and we recommend that Council table the proposed second reading of this ordinance to a date certain of Tuesday, August 16, 2016 @ 7:00pm - 700 Doug Davis Drive.**

For additional information, please contact the City Manager.

Staff Comment

Public Comment

Mayor and Council Comment

7.IV. Consideration And Action On Ordinance 2016-19 Zoning Map (Text Amendment)

**Background:**

Currently, two sections exist in the City's code of ordinances that establish the City's official zoning map—Section 93-3.1-2 ("Article 3.1 Ordinance") and Section 93-3-1.2 ("Article 3 Ordinance"). Due to the transposition of a dash and a point, the Article 3 Ordinance was incorrectly inserted into the City's code of ordinances in 2007 when the City Council readopted the zoning map, and the error has not been noticed until now.

The Article 3.1 Ordinance is the correct ordinance and it has been amended several times since 2007; however, when the City Council last readopted the zoning map, on April 5, 2016, the Article 3 Ordinance was amended (instead of the correct ordinance, the Article 3.1 Ordinance).

The ordinance currently before you deletes the currently existing text of the Article 3.1 Ordinance and renumbers the Article 3 Ordinance to the Article 3.1 Ordinance. The result will be that the current zoning map is the April 5, 2016 zoning map and only one code section establishing the zoning map remains. The zoning map will not be readopted and the designation of the April 5, 2016 zoning map remains the same as the official zoning map of the City. **The proposed Ordinance is set for the second and final reading.**

For additional information please contact the City Manager's Office.

Staff Comment  
Public Comment  
Mayor and Council Comment

Documents:

[ZONING MAP READOPTION ORDINANCE \\_3\\_.PDF](#)

7.V. Consideration And Action On Ordinance 2016-20 Storm Water Utility

**Background**

For years, the City has failed to make investments in the needed infrastructure to properly manage and control run off from storm water. Ever increasing State and Federal regulatory requirements to clean up this key source of non-point source pollution are being implemented in the Atlanta metro area.

This ordinance recognizes the importance of controlling the effects of stormwater runoff throughout the City. Efforts to protect the public health, safety, environment and general welfare require the construction, operation and maintenance of Hapeville's stormwater facilities. The establishment of a stormwater utility fee is vital tool in addressing the funding of operational and capital investment needs of Hapeville's stormwater management program now and in the future. The stormwater service fee rate or Equivalent Residential Unit (ERU) will be set at \$ 3.50 per month for the calendar year. This rate is far below many of our neighboring communities. A detailed informational sheet on the Stormwater Utility and how it works will be available on the City's website. We will also be putting together educational information in the upcoming newsletters. The first bill for storm water will be sent out in a stand alone bill in January of 2017 for the 2016 months after the ordinance is approved. Subsequent annual stormwater utility bills will be sent out with the tax bill in August/September. Staff has discussed this proposal as part of the budget process. We see this as a critical step in our overall environmental stewardship to clean and protect our environment. **The proposed ordinance is set for second and final reading. If approved by Council staff will aggressively reach out and educate the citizens and businesses of the community.**

For further information, please contact the City Manager.

Documents:

[HAPEVILLE STORMWATER UTILITY ORDINANCE.PDF](#)  
[STORMWATER UTILITY PRESENTATION 4-28-16.PDF](#)

8. Public Comments On Agenda Items

The public is encouraged to communicate their questions, concerns, and suggestions during Public Comments. The Council does listen to your concerns and will have Staff follow-up on any questions you raise. Any and all comments should be addressed to the Governing Body, not to the general public and delivered in a civil manner in keeping with common courtesy and decorum.

9. Old Business

9.I. Discussion Of Building Collapse 597 N. Central

**Background:**

On July 21, 2015 a construction accident caused a major building collapse at 597 N. Central Ave. the site of the new theater improvements. Fortunately no loss of life or major injury occurred. Staff responded to the emergency, secured the site, cleaned up the site and took actions to protect and stabilize the site. Staff has been actively working in concert with the City Attorney to get the Insurance company of the contractor and sub-contractor to restore the City's loss. We feel comfortable that the claim making the City whole for the loss will be paid in the next few weeks.

Staff now requests direction from the City Council regarding what should be built at the site. Our projected budget is approx. \$317,000 to complete the work. Staff would like Council to outline the basic direction for these funds. We understand safety (due to the compromised stability of the walls) and honoring the contract provisions with the Academy Theater are the primary policy objectives. Staff would like to know if there are there any other directions or objectives that Council would like to see achieved before we initiate work at the site again? For example, what should be the process for design input/approval? The City Manager has stated several times that Mr. David Burt will be the Project Manager and report directly to him on the status of the work effort.

In closing, please contact the City Manager's Office if you have any additional questions.

9.II. Board And Commission Appointments

- Design Review Committee (1 position)
- Ethic Committee (1 position)

10. New Business

10.I. Consideration And Action To Enter Into An Agreement With KaBoom! Inc. For \$8,500 To Design And Build A Playground In Master Park.

**Background**

In early June, Council entered into a Letter of Intent with the KaBoom Granting Agency (that offers a wide variety of funding opportunities to help you bring more play into communities) to apply for a KaBoom Playground Design & Build Playground Grant for Master Park. The City has now received preliminary grant award notification for this project. This agreement would officially accept the grant award and move the project into implementation.

Improvements to this park's playground would offer a much needed safe play area for active families to walk/bike to and to gather. With the funding assistance of KaBoom's funding partner for this project, Target, and expertise of the KaBOOM team, we could make this playground the place that would be accessible to children and their families to visit and interact with and have fun. Staff has reviewed the Parks and Grounds Site Improvements funds and could make \$8,500 available for this site improvement project. A projected interactive design phase and "build day" is tentatively suggested for October 2016.

If you have any further questions, please contact the City Manager.

Documents:

[2016 COVER LETTER - CITY OF HAPEVILLE AND TARGET.PDF](#)  
[2016 LOA - CITY OF HAPEVILLE AND TARGET.PDF](#)

10.II. Consideration And Action On Expenditure Of \$9,502.50 To Municipal Code Corporation For Codification Of The City Of Hapeville Code Of Ordinances.

**Background**

This expenditure will provide for the City of Hapeville Code of Ordinances to be codified through Ordinance 2016-12. This will be Supplement No. 7 for the Code contract. The amount proposed is \$9,502.50. This amount must be approved by Council as the City Manager's spending limit is \$5,000.00. The proposed contract expense was planned for in the FY16/17 budget.

Should you have any additional questions, please contact the City Manager's Office.

10.III. Consideration And Action On Ordinance 2016-21 Moratorium Probation/Bail Bonds

**Background**

It has been brought to the City Manager's attention that the ordinance provisions concerning such uses as pawn brokers, check cashing outlets, probationary offices and bail bondsman may not be sufficiently protective of the community and the investment being made by commercial property owners. While certain uses that have proven to have adverse impacts on nearby neighbors are prohibited in individual zoning districts, a comprehensive treatment of such uses is lacking in our current Code.

As the City re-develops; it can be a challenge to "raise the bar" and move in new directions when market forces tend to find uses that match the old pattern and previous development character. If Council is committed to supporting the new vision of an arts-oriented community, we should be proactive in appropriately regulating operations that may be inconsistent with this vision. Our development team recommends we pass the attached Ordinance which would place a 126-day moratorium on several uses that may detract and present a barrier to redeveloping the city particularly the arts overlay district. Such uses as probationary offices, bail bondsman, check cashing outlets and title pawn shops should all be evaluated carefully with an eye to appropriate limitations. Although such services are important and address certain citizen needs, limiting their location and use may help the community better achieve the goals we desire. Passing the moratorium targeted at these specific uses would give our team time to do additional research and make recommendations that properly balance the development rights of various property owners against the greater vision of the community.

It should be noted that this type of planning for growth consideration is scheduled to be looked at comprehensively during the forthcoming LCI Update process. However, this particular measure is being recommended by the team now in order to stay ahead of the curve until that process is complete.

Should you have any specific questions on this matter, please contact the City

Manager's Office.

Documents:

[HAPEVILLE - MORATORIUM - BAIL BOND\\_PRIVATE PROBATI\(7\).PDF](#)

10.IV. Consideration And Action To Enter Into A Cooperation Agreement With Airport West Community Improvement District Board.

**Background**

On June 7, 2016 the City Council approved Resolution 2016-08 appointing Mr. Joe Folz as our representative on the newly formed/expanded Community Improvement District (CID) Board operating in parts of the City. The attached MOU is a standard agreement between the CID and the City to clarify roles and responsibilities with regard to maintenance and various projects. The CID Board has taken action on the agreement and the CID Executive Director has requested that the City Council approve as well.

For further information, please contact the City Manager's Office

Documents:

[COOPERATION AGREEMENT CID WEST.PDF](#)

11. Public Comments

At this time, the Mayor opens the floor to comments from the audience. Comments should relate to a specific agenda item, not listed on the agenda for a Public Hearing, or to a concern within the jurisdiction of the City. Mayor and Council meetings serve the purpose of conducting city business and are not a forum for the unlimited expression of opinion. The Chairperson reserves the right to limit comments to matters germane to city business and may refer speakers to the City Manager or other staff for resolution.

12. Mayor And Council Comments

13. Executive Session (If Needed)

14. Adjourn

Public involvement and citizen engagement is welcome as Hapeville operates a very open, accessible and transparent government. We do however remind our attendees/residents that there are times allocated for public comments on the agenda. In order for council to conduct their necessary business at each meeting, we respectfully ask that side-bar conversations and comments be reserved for the appropriate time during the meeting. This will allow the City Council to conduct the business at hand and afford our meeting attendees ample time for comments at the appropriate time during the meeting.

## TAX DIGEST FOR CITY OF HAPEVILLE 2016

Pursuant to the requirements of O.C.G.A.48-5-32, the City of Hapeville hereby publishes the following presentation of the estimated current year's Tax Digest and the history of the Tax Digest and Levy for the past five years. The Mayor and Council will hold public hearings on August 2, 2016 at 7:00PM, August 16, 2016 at 7:00PM at 700 Doug Drive, Hapeville, GA 30354 and August 16, 2016 at 9:00 AM at 3468 North Fulton Avenue, Hapeville, GA 30354. The Mayor and Council will set the millage rate 16.61 and 1.0 for the Special District Tax.

	2011	2012	2,013	2,014	2015	Estimated 2016
Real & Personal	263,245,516	265,309,411	257,927,290	260,934,307	261,722,449	281,095,350
Public Utilities					7,372,269	20,331,731
Motor Vehicles	8,666,570	8,258,170	8,428,420	7,102,350	5,237,390	4,025,640
Mobile Home						
Gross Digest	271,912,086	273,567,581	266,355,710	267,555,217	274,332,108	305,452,721
Less M&O Exemption	(1,357,480)	(1,481,880)	(1,297,240)	8,292,600	(8,299,400)	(7,224,570)
Net M&O Digest	270,554,606	272,085,701	265,058,470	259,262,617	266,031,708	298,228,151
Gross M&O Millage	21.11	21.11	21.11	21.11	21.11	22.39
Less Rollbacks	4.50	4.50	4.50	4.50	4.50	5.78
Net M&O Millage	16.61	16.61	16.61	16.61	16.61	16.61
Net Taxes Levied	4,493,912	4,519,343	4,402,621	4,306,352	4,418,803	4,953,569
Net Tax \$ Increase	(773,534)	25,431	(116,722)	(96,269)	112,451	534,766
Net Tax % Increase	-14.69%	0.57%	-2.58%	-2.19%	2.61%	12.10%
						William Whitson
*Proposed Millage and Levy						City Manager

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*Proposed Millage and Levy						City Manager

**STATE OF GEORGIA**

**CITY OF HAPEVILLE**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO AMEND SECTION 93-3.1-2, RENUMBER SECTION 93-3-1.2, AND REPEAL SECTION 93-3.1-2 OF CHAPTER 93, ZONING, OF ARTICLE 3, NONCONFORMING USES, OF THE CODE OF ORDINANCES, CITY OF HAPEVILLE, GEORGIA, AND TO REPEAL SUCH SECTION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, the governing authority of the City of Hapeville (“City”) is the Mayor and Council thereof; and

**WHEREAS**, on April 5, 2016, the City amended Section 93-3-1.2 of the Code of Ordinances, City of Hapeville, Georgia (“City Code”) to provide for the readoption of the Official Zoning Map of the City of Hapeville (“zoning map”); and

**WHEREAS**, the City subsequently discovered that, due to a typographical error in prior legislation adoption the zoning map, the City Code now contains to separate sections designating the zoning map; and

**WHEREAS**, Sections 93-3-1.2 and 93-3.1-2 of the City Code designate two different versions of the zoning map as a result; and

**WHEREAS**, to protect the integrity of the zoning map and ensure consistent application of its zoning ordinances, the City desires to remedy this statutorily by (1) renumbering Section 93-3-1.2 to Section 93-3.1-2 and (2) repealing Section 93-3-1.2; and

**WHEREAS**, the health, safety, and welfare of the citizens of Hapeville, Georgia, will be positively impacted by the adoption of this Ordinance.

**BE IT AND IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAPEVILLE, GEORGIA**, and by the authority thereof:

**Section 1.** That the Code of Ordinances, City of Hapeville, Georgia, is hereby amended by deleting, in its entirety, the text in Section 93-3.1-2 (Zoning map) of Article 3.1 (Zones) of Chapter 93 (Zoning).

**Section 2.** That the Code of Ordinances, City of Hapeville, Georgia, is hereby amended by renumbering Section 93-3-1.2 (Zoning map) of Article 3 (Nonconforming uses) of Chapter 93 (Zoning), including all text presently contained in such provision, as Section 93-3.1-2 (Zoning map) of Article 3.1 (Zones) of Chapter 93 (Zoning).

**Section 3.** That the Code of Ordinances, City of Hapeville, Georgia is further amended by deleting, in its entirety, any remaining text in as well as the numerical designation of Section 93-3-1.2 (Zoning map) of Article 3 (Nonconforming uses) of Chapter 93 (Zoning).

**Section 4.** The readoption of the City of Hapeville Official Zoning Map shall be unaffected by this Ordinance, and the zoning map adopted April 5, 2016 shall remain the Official Zoning Map of the City.

**Section 5.** The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 6.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

**Section 7.** All Ordinances and parts of Ordinances in conflict herewith are hereby expressly repealed.

**Section 8.** This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City.

**Section 9.** Penalties in effect for violations of the Zoning Ordinance of the City of Hapeville at the time of the effective date of this Ordinance shall be and are hereby made applicable to this Ordinance and shall remain in full force and effect.

**Section 10.** The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

**ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF HAPEVILLE, GEORGIA**

\_\_\_\_\_  
**Alan H. Hallman**, Mayor

**ATTEST:**

\_\_\_\_\_  
**Jennifer Elkins**, City Clerk

**APPROVED BY:**

\_\_\_\_\_  
**Steven M. Fincher**, City Attorney

**STATE OF GEORGIA**

**CITY OF HAPEVILLE**

**ORDINANCE NO. 2016-20**

AN ORDINANCE AMENDING CHAPTER 63, STORMWATER MANAGEMENT, OF PART II OF THE CODE OF ORDINANCES OF HAPEVILLE BY INSERTING AND OTHERWISE ADDING ARTICLE 4, A NEW ARTICLE; TO PROVIDE FOR SEVERABILITY, TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, the governing authority of the City of Hapeville (“City”) is the Mayor and Council thereof; and

**WHEREAS**, the City, through its governing authority and pursuant to Section 1-103 of its charter, is authorized to acquire, construct, operate and maintain drains, flood control areas and facilities and other public improvements; and

**WHEREAS**, the City, through its governing authority and pursuant to Section 5-108 of its charter, is authorized to assess and collect fees and charges for water, sewer, sanitary and health services, or any other services rendered within and without the corporate limits of the City; and

**WHEREAS**, the governing authority recognizes that control of the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment is a significant regulatory function of the City; and

**WHEREAS**, the governing authority recognizes that stormwater management is necessary throughout the city, and, in order to protect the public health, safety, environment and general welfare through the establishment of a stormwater utility and the imposition of fees for

the management of such utility, the governing authority desires to amend its Code of Ordinances;  
and

**BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL  
OF THE CITY OF HAPEVILLE, GEORGIA, and by the authority thereof:**

**Section 1:** The City's Code of Ordinances is hereby amended by inserting and otherwise adding a new article 4, Stormwater Utility Ordinance, to the existing text of Chapter 63, Stormwater Management, to read and to be codified as follows:

**“ARTICLE 4. STORMWATER UTILITY ORDINANCE**

**Sec. 63-4-1. - Short title.**

This ordinance will be known as the Hapeville Stormwater Utility Ordinance.

**Sec. 63-4-2. - General provisions.**

- (a) Purpose and Intent. The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the establishment of a stormwater utility in the City of Hapeville. The objectives of this ordinance are stated as follows:
- (1) The professional engineering and financial analyses conducted on behalf of and submitted to the Mayor and Council properly assess and define the stormwater management problems, needs, goals, program priorities and funding opportunities of the city.
  - (2) Given the problems, needs, goals, program priorities and funding opportunities identified in the professional engineering and financial analyses submitted to the city, it is appropriate to authorize the establishment of a separate accounting unit which shall be dedicated specifically to the management, maintenance, protection, control, regulation, use and enhancement of Stormwater Systems in the city.
  - (3) Stormwater management is necessary throughout the city. Intense urban development in the city has radically altered the natural hydrology of the area and the hydrologics of Stormwater Systems, with many natural elements having been replaced or augmented by man-made facilities. As a result, the specific service, System demands in the city now exceed the service capability of many of the Systems. An advanced level of service is needed in the city due to its urbanization, therefore a stormwater utility service area subject to Stormwater Service Fees should encompass the entirety of the city to enable the city to successfully manage, operate and improve Stormwater Systems at an advanced level.
  - (4) It is most equitable that a portion of the needed stormwater service level continue to be funded from the city's Water and Sewer Revenue and Water and Sewer Fund Revenues, and therefore that the Mayor and Council may allocate such revenue(s)

- and funds to support stormwater management in the future in the form of a combination of service fee payments for city-owned properties and a supplemental allocation of general fund funding.
- (5) The stormwater needs in the city include but are not limited to protecting the public health, safety and welfare. Funding of stormwater services and facilities is therefore incidental to the fundamental regulatory function of the city in protecting the public health, safety and welfare.
  - (6) Provision of stormwater management programs and Systems renders and/or results in both service and benefit to individual properties, property owners, citizens and residents of the city and to all properties, property owners, citizens and residents of the city concurrently in a variety of ways as identified in the professional engineering and financial analyses, and the service and benefits differ among the individual properties, property owners, citizens and residents in relation to the demands they impose individually and collectively on the Stormwater Systems.
  - (7) The service and benefit rendered or resulting from the provision of stormwater management programs and Systems may differ over time depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater management programs and Systems and risk exposure. It is not practical to allocate the cost of the city's stormwater management programs, Systems in direct relationship to the services or benefits rendered to or received by individual properties or persons over a brief span of time, but it is both practical and equitable to allocate the cost of stormwater management among properties and persons in proportion to the long-term demands they impose on the city's stormwater management programs, Systems which render or result in services and benefits.
  - (8) The city presently owns and operates Stormwater Management Systems which have been developed, installed and acquired through various mechanisms over many years. The future usefulness and value of the existing Stormwater Systems owned and operated by the city, and of future additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use and enhance the Stormwater Systems in the city. In order to do so, the city must have adequate and stable funding for its stormwater management program operating and capital investment needs.
  - (9) The Mayor and Council find, conclude and determine that a stormwater utility provides the most practical and appropriate means of properly delivering stormwater management services and benefits throughout the city, and the most equitable means to fund an advanced level of stormwater services in the city is through Stormwater Service Fees and other mechanisms as described in the professional engineering and financial analyses prepared for the city.
- (b) Applicability. The provisions of this ordinance shall apply throughout the corporate area of Hapeville.
  - (c) Compatibility with Other Regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

- (d) **Severability.** If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.
- (e) **Responsibility for Administration.** The City Manager shall administer, implement, and enforce the provisions of this ordinance.

Sec. 63-4-3. - Definitions.

- (a) **Credit:** Credit means a conditional reduction in the amount of a stormwater service fee or other fees, rates, rentals, charges, fines and penalties to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility, or continuing provision of a service or activity that reduces the stormwater utility's cost of providing Stormwater Management Systems and facilities.
- (b) **Customer:** Customer means all persons, properties and entities served by and/or benefitting from the utility's acquisition, management, maintenance, extension, regulation and improvement of the stormwater management programs, Systems and regulation of public and private Stormwater Systems and activities related thereto, and persons, properties and entities which will ultimately be served or benefitted as a result of the stormwater management program.
- (c) **Developed Land:** Developed Land shall mean property altered from its natural state by construction or installation of more than two hundred (200) square feet of Impervious Surfaces as defined in this chapter.
- (d) **Duplexes and Triplexes:** Duplexes and Triplexes shall mean Developed Land containing two (duplex) or three (triplex) residential dwelling units located within the same building on one or more parcels of land.
- (e) **Equivalent Residential Unit:** For the purposes of this article, an Equivalent Residential Unit shall mean two thousand four hundred (2,400) square feet of Impervious Surfaces. The Equivalent Residential Unit shall be used as the basis for determining Stormwater Service Fees to Single-Family Dwelling Unit properties or classes of Single-Family Dwelling Unit properties and to other Developed Lands.
- (f) **Hydrologic Response:** Hydrologic Response means the manner whereby stormwater collects, remains, infiltrates and is conveyed from a property. Hydrologic Response is dependent on several factors including but not limited to the presence of impervious area, the size, shape, topographic, vegetative and geologic conditions of a property, antecedent moisture conditions and groundwater conditions on a property.
- (g) **Impervious Surfaces:** Impervious Surfaces means those areas which prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, paved areas and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development or other imposition of Impervious Surfaces.
- (h) **Multiple-family Dwelling Unit Residential Properties:** Multiple-Family Dwelling Unit Residential Properties shall mean Developed Land whereon more than one residential

dwelling unit is located, and shall include, but not be limited to, apartment houses, structures containing multiple residential condominiums located on a single parcel of property, boarding houses, group homes, hotels and motels, personal care homes, homes for the elderly, retirement and nursing homes, and other structures in which more than one family group commonly and normally reside or could reside. For the application of Stormwater Service Fees, Multiple-Family Dwelling Unit Residential Properties shall be treated in the same manner as are Other Developed Lands as defined in this article.

- (i) *Other Developed Lands*: Other Developed Lands shall mean, but not be limited to, multiple-family dwelling unit residential unit properties, manufactured home and mobile home parks, commercial, retail and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with Impervious Surfaces, railroad stations and other transportation facilities covered by Impervious Surfaces, parking lots and decks, parks and other recreational properties, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, agricultural uses covered by Impervious Surfaces, and water and wastewater treatment plants and all other types of Developed Land except Single-Family Dwelling Units.
- (j) *Single-Family Dwelling Unit*: Single-Family Dwelling Unit shall mean Developed Land upon which is located one principal structure that contains one dwelling unit designed for occupancy by one family, with a bathroom and kitchen facilities. Single-Family Dwelling Units may include houses, Duplexes, Triplexes, manufactured homes and mobile homes located on one or more individual lots or parcels of land, and fee-simple ownership or condominium townhomes and attached single-family residential structures located on individual lots or parcels of land and such single units located on more than one individual lot or parcel of land. For the purposes of this article, Developed Land may be classified as a Single-Family Dwelling Unit despite the presence of incidental and/or accessory structures associated with residential uses such as garages, carports or small storage buildings, accessory dwellings or the presence of a commercial use within the dwelling unit so long as such use does not result in additional areas of Impervious Surfaces such as parking spaces, playgrounds or structures or additions to the building which are used as offices, storage facilities, meeting rooms, classrooms, houses of worship or similar nonresidential uses. Single-Family Dwelling Units shall not include Developed Land containing structures used primarily for nonresidential purposes, manufactured homes and mobile homes located within manufactured home or mobile home parks where the land is owned by others than the owners of the manufactured homes or mobile homes, or multiple-family residential units that are individually owned but are located on a single parcel of Developed Land, such as condominiums and cooperatively-owned apartments.
- (k) *Stormwater Service Fees or Stormwater Service Charge*: Stormwater Service Fees or Stormwater Service Charge shall mean the periodic service fee imposed pursuant to this article by the city for the purpose of recovering and/or funding costs related to Stormwater Management Systems and facilities. The use of the area of impervious surface on each property as a measure to determine the stormwater service fee rate shall not preclude the use of other measures, or of grouping of properties having similar characteristics into classes or categories, grouping of properties having similar characteristics through the use of ranges or rounding up or down to a consistent

numerical interval, or the use of flat-rate fees for one or more classes of similarly-situated properties whose impact on the city's cost of providing Stormwater Management Systems and facilities is relatively consistent. Stormwater Service Fees may also include certain special charges to individual properties or persons for Stormwater Management Systems and facilities or services related to stormwater management, including but not limited to charges for development plan review, inspection of development projects and on-site stormwater control systems, and enhanced levels of stormwater service above and beyond the service levels normally provided by city.

- (l) *Stormwater Management Systems*: Stormwater Management Systems or Stormwater Systems or Systems means those natural and man-made channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, area drains, drop inlets, junction boxes, pipes, head walls, flared end sections, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff.
- (m) *Undeveloped Land*: Undeveloped Land means land in its unaltered natural state or which has been modified to such minimal degree as to have a Hydrologic Response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped Land shall have no pavement, asphalt, or compacted gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur if the land was in an unaltered natural state.

Sec. 63-4-4. - Establishment of a utility and an enterprise fund.

- (a) There is hereby established a stormwater utility which shall be responsible for stormwater management programs throughout the city, and which shall provide for the management, protection, control, regulation, use and enhancement of Stormwater Systems. The stormwater utility management unit shall be composed of such personnel, employees and agents of the city as the Mayor and Council may from time to time determine and their compensation shall be fixed and determined by the City Manager as approved by the Mayor and Council.
- (b) A stormwater enterprise fund shall be established in the city budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater utility, including but not limited to rentals, rates, charges, fees and licenses as may be established by the Mayor and Council and other funds that may be transferred or allocated to the stormwater utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater enterprise fund and all expenses of the utility shall be paid from the stormwater enterprise fund, except that other revenues receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, Systems, operations and capital investments as deemed appropriate by the Mayor and Council, upon recommendation by the City Manager.
- (c) The Mayor and Council hereby confer upon the stormwater utility operational control over the existing stormwater management programs, Systems performed, provided or owned and heretofore operated by the city and other related assets, including but not limited to properties other than roadways upon which such Systems are located,

easements, rights-of-entry and access, and certain equipment used solely for stormwater management.

Sec. 63-4-5. - Scope of responsibility for the Stormwater Management Systems.

- (a) The city owns or has legal access, for purposes of operation, maintenance and improvement, to those Stormwater Management Systems which:
  - (1) Are located within public streets, rights-of-way and easements;
  - (2) Are subject to easements, rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for adequate access for operation, maintenance and/or improvement of Systems; or
  - (3) Are located on public lands to which the city has adequate access for operation, maintenance and/or improvement of Systems.
- (b) Operation, maintenance and/or improvement of Stormwater Management Systems which are located on private property or public property not owned by the city and for which there has been no public dedication of such Systems for operation, maintenance and/or improvement of such Systems shall be and remain the legal responsibility of the property owner, except as that responsibility may be otherwise affected by state and federal law.
- (c) It is the express intent of this article to protect the public health, safety and welfare of all properties and persons in general by regulation of the Stormwater Management Systems, but not to create any special duty or relationship with any individual person or to any specific property within or outside the boundaries of the city. The city expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the city, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.
- (d) To the extent any permit, plan approval, inspection or similar act is required by the city as a condition precedent to any activity or change upon property not owned by the city, pursuant to this or any other regulatory ordinance, regulation, or rule of the city or under federal or state law, the issuance of such permit, plan approval or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages against the city, its officers, employees or agents.

Sec. 63-4-6. - Requirements for on-site Stormwater Management Systems: enforcement methods and inspections.

- (a) Every owner of real property located in the city, and every person which serves as a contractor for the purpose of developing real property located in the city shall, as to the real property owned or being developed, provide, manage, maintain and operate on-site Stormwater Management Systems and facilities sufficient to collect, convey, detain, control and discharge stormwater in a manner which is in compliance with all of the city ordinances and resolutions, and state and federal laws, rules and regulations, and which, in any event, will not discharge stormwater in a manner which will flood, damage or otherwise harm property which is located downstream from the real property owned or being developed. A failure by an owner and/or contractor to meet the obligations and

requirements imposed by this article shall constitute a private nuisance and the parties damaged thereby or the city may bring an action to abate such nuisance. Any parties so damaged may include in such action a claim for the damages that such party has sustained.

- (b) If any court of competent jurisdiction shall find that the failure of the owner and/or contractor to meet the obligations and requirements imposed by this article constitutes a public nuisance, and the owner and/or developer fails to abate such nuisance within any time limit which the court might impose, the city may enter upon the property at issue and cause such work to be performed as is reasonably necessary to abate the nuisance, with the cost of such work to be charged to the owner and the developer, if any, on a joint and several basis.
- (c) If the city incurs costs to abate a public nuisance, the city shall file suit to recover such costs and establish its judgment lien rights in relation thereto, which lien rights shall be perfected, after judgment, by the city filing a notice of lien on the general execution docket of the Superior Court of Fulton County.
- (d) The city's designated officers, representatives, agents and employees shall have the right, pursuant to its authority in Chapter 54 of its ordinances, to enter upon private and public property owned other than by the city, upon reasonable notice to the owner of such property, to inspect the property and conduct surveys and engineering tests on such property in order to assure compliance with any order or judgment entered pursuant to this section.

Sec. 63-4-7. - Stormwater management fees authorized.

- (a) The city is authorized to impose a service fee on each Customer of the Stormwater System, provided that such fee is closely associated with the amount of Impervious Surface associated with a particular property for which the service fee is imposed.
- (b) Single-Family Dwelling Units, as defined by this article, shall be billed for one Equivalent Residential Unit, as defined in this article.
- (c) The stormwater service fee rate per Equivalent Residential Unit, as defined in this article, shall be three dollars and fifty cents (\$3.50) per month for the calendar year of the effective date of this ordinance and for subsequent years, unless modified by the City.
- (d) All Developed Lands not classified as Single-Family Dwelling Units, as defined by this article, shall be billed for one Equivalent Residential Unit, as defined by this article, for each 2.40 thousand (2,400) square feet of Impervious Surfaces or partial increment thereof located on the property.
- (e) Stormwater service fee rates may be determined and modified from time to time by the Mayor and Council of the city so that the total revenue generated by said fees and any other sources of revenues or other resources allocated to stormwater management by the Mayor and Council shall be sufficient to meet the cost of stormwater management programs, systems and facilities, including but not limited to the payment of principal and interest on debt obligations, operating expense, capital outlays, non-operating expense, provisions for prudent reserves and other costs as deemed appropriate by the Mayor and Council of the city.
- (f) Stormwater service fee revenues in any given year may exceed or be less than the cost of service in that year, provided, however, that the stormwater service fee rate shall be based

on meeting the long-term projected cost of stormwater management programs, systems and facilities.

- (g) All unencumbered stormwater management funds derived from service fees and other sources of revenue not expended at the end of a fiscal year shall remain in the stormwater management utility enterprise fund account and balances shall be forwarded to the next fiscal year.
- (h) Stormwater service fee rates shall be structured so as to be fair and reasonable, and the resultant service fees shall bear a substantial relationship to the cost of providing stormwater management services and Systems.
- (i) The cost of stormwater management services and Systems may include operating expenses, capital investments, and reserve accounts.
- (j) To the extent practicable, Credits against Stormwater Service Fees and/or other methods of funding stormwater management shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the city's standards by private property owners which eliminate, mitigate or compensate for the impact that the property or person may have upon stormwater runoff discharged to public Stormwater Systems or to private Stormwater Systems which impact the proper function of the public Stormwater Systems.

Sec. 63-4-8. - Billing, delinquencies, and collection of Stormwater Service Fees.

- (a) The city is authorized to establish and/or utilize its own policies with respect to the billing and collection of the stormwater utility service fees and the treatment of delinquent accounts. The stormwater utility service fee may be billed separately, or on a Customer statement and collected along with other utility services provided by the city, at the city's sole discretion. The city is authorized to apply partial payments proportionately among the water, sewer, and stormwater fees charged by the city. The city is authorized to use existing city procedures for disconnection of water service with respect to non-payment.
- (b) A stormwater service fee bill may be sent though the United States mail or by alternative means, notifying the Customer of the amount of the bill, the date the payment is due, and the date when past due.
- (c) The stormwater service fee bill may be billed and collected along with other fees and charges, including but not limited to, other utility bills, assessments or property taxes, as deemed most effective and efficient by the City Manager. Failure to receive a bill is not justification for non-payment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of Developed Land shall be ultimately obligated to pay such fees and other charges and any associated fines or penalties, including but not limited to, interest on delinquent service fees. If a property owner is under billed, or if no bill is sent for a particular tract of Developed Land, the city stormwater utility may back bill for a period of up to one year, but shall not be entitled to any interest for any delinquency during the back billed period. A late fee of five (5) percent of the unpaid balance of any stormwater utility service fee bill shall be charged when a bill becomes delinquent. Thereafter, an additional fee of one (1) percent based on the unpaid bill and any applicable delinquency fee shall be charged for each month the bill remains delinquent.

- (d) Stormwater Service Fees shall begin to accrue August 3, 2016, and shall be billed in arrears.
- (e) Frequency of the billing of Stormwater Service Fees shall be monthly unless otherwise specified by Mayor and Council.
- (f) Additionally, if unpaid, Stormwater Service Fees shall be collected as provided in Sec. 5-112 of the city Charter.

Sec. 63-4-9. Exemptions and Credits.

- (a) Except as provided in this section, no public or private property shall be exempt from stormwater utility service fees or receive a credit or offset against such service fees. No exemption, Credit, offset or other reduction in Stormwater Service Fees shall be granted based on the age, tax, or economic status, race or religion of the Customer, or other condition unrelated to the stormwater utility's cost of providing Stormwater Management Systems and facilities.
- (b) The following properties are hereby exempt from Stormwater Service Fees:
  - (1) Properties that are not defined in this article as being Developed Land shall be exempt from Stormwater Service Fees.
  - (2) Railroad tracks, gravel and stone areas underneath and immediately adjacent to the tracks, and undeveloped portions of the railroad right of way shall be exempt from Stormwater Service Fees. However, railroad stations, maintenance buildings, paved or unpaved service roads and drives, or other Developed Land used for railroad purposes shall not be exempt from Stormwater Service Fees.
- (c) A Stormwater Utility Service Fee Credit Application and Instructions shall be prepared by the city engineer and approved by the Mayor and Council specifying the design and performance standards of on-site stormwater systems, facilities and activities that qualify for application of a service fee Credit, and how such Credits shall be calculated.
- (d) The following properties are hereby eligible for Credit(s) based on Stormwater Control Systems or other mitigation:
  - (1) Developed Land than other Single-Family Dwelling Units, which use stormwater control systems or facilities that reduce or mitigate the impact of Impervious Surfaces on the subject property.
    - i. Developed Land meeting eligibility for Credit under this subsection includes but is not limited to: Multiple-Family Dwelling Unit Residential Properties, manufactured home and mobile home parks, commercial, retail and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with Impervious Surfaces, parking lots, parks and other recreational properties, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, agricultural uses covered by Impervious Surfaces, and water and wastewater treatment plants and all other types of Developed Land except Single-Family

Dwelling Units may receive a Credit against the stormwater service fee applicable to the property.

- ii. The stormwater utility service fee Credit for on-site stormwater control systems or facilities under subsection (d)(1) shall be proportional to the extent that the on-site stormwater control systems or facilities provided, operated, and maintained by the property owner meets or exceeds the city's development and performance standards contained in the Stormwater Utility Service Fee Credit Application and Instructions and other requirements and conditions.
  - iii. The amount of the stormwater utility service fee Credit under subsection (d)(1) shall not be related to the cost incurred by the property owner for performing, constructing, providing and/or maintaining such programs, systems, facilities, services and activities.
- (2) Groups of Single-Family Dwelling Units represented by an incorporated homeowner's association that owns, operates and maintains on-site stormwater control systems or facilities, or that provides services or activities that reduce or mitigate the impact of Impervious Surfaces located on the subject properties may receive a Credit against the stormwater service fee applicable to the properties represented by the homeowner's association.
- i. Such service fee Credit shall be based on attaining and continuing compliance with the technical requirements and performance standards contained in the Stormwater Utility Service Fee Credit Application and Instructions and other requirements and conditions.
  - ii. The stormwater utility service fee Credit for on-site stormwater control systems or facilities, or for services or activities provided by groups of Single-Family Dwelling Units under subsection (d)(2) shall be proportional to the extent that the on-site stormwater control systems or facilities provided, operated and maintained by the homeowner's association meets or exceeds the city's development and performance standards contained in the Stormwater Utility Service Fee Credit Application and Instructions and other requirements and conditions.
  - iii. Such Credits under subsection (d)(2) shall be proportionately allocated among all properties presented by the incorporated homeowner's association. The stormwater utility service fee Credit for services and activities that reduce or mitigate the stormwater utility's cost of providing Stormwater Management Systems and facilities shall not be related to the cost of such services and activities to the homeowner's association or any person or entity providing same.
- (3) Individual Single-Family Dwelling Units required by the city to install on-site detention or that provide services or activities that reduce or mitigate the impact of impervious surfaces located on the subject properties may receive a Credit against the stormwater service fee applicable to the subject property.

- i. Such service fee Credit under subsection (d)(3) shall be based on attaining and continuing compliance with the technical requirements and performance standards contained in the Stormwater Utility Service Fee Credit Application and Instructions and other requirements and conditions.
- ii. The stormwater utility service fee Credit under subsection (d)(3) for on-site stormwater control systems or facilities, or for services or activities provided by individual single- family dwelling units shall be a fixed amount and shall be subject to the requirement that the on-site stormwater control systems or facilities provided, operated, and maintained by the property owner meet the city's development standards and performance standards contained in the Stormwater Utility Service Fee Credit Application and Instructions and other requirements and conditions.
- iii. The stormwater utility service fee Credit for services, facilities and activities under subsection (d)(3) shall not be related to the cost of such services and activities to the homeowner or any person or entity providing same.

Sec. 63-4-10. Appeals.

Any Customer who believes the provisions of this article have been applied in error may appeal in the following manner and sequence:

- (a) An appeal must be filed in writing with the City Manager or her/his designated representative. In the case of stormwater service fee appeals, the appeal shall include a survey prepared by a registered land surveyor or professional engineer containing information on the total property area, the impervious surface area, and any other features or conditions that influence the Hydrologic Response of the property to rainfall events.
- (b) Using information provided by the appellant, the City Manager shall conduct a review of the conditions on the property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the City Manager may adjust the stormwater service fee applicable to any property in conformance with the general purposes and intent of this article.
- (c) All decisions by the City Manager shall be served on the appellant personally or by registered or certified mail, sent to the billing address of the appellant. All decisions of the City Manager shall be final.
- (d) Any person aggrieved by a decision or order of the city shall have a right to appeal by writ of certiorari to the Superior Court of Fulton County.

Sec. 63-4-11. - Effective date of Stormwater Service Fees.

The city may begin collecting the stormwater service fee on or after August 3, 2016.

Secs. 63-4-12—63-4-100. Reserved.”

**Section 2.** The preamble of this Ordinance shall be considered to be and it hereby fully incorporated by reference as if fully set out herein.

**Section 3.** This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City.

**Section 4.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

**Section 5.** It is hereby declared to be the intention of the Mayor and Council, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Hapeville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

**Section 6.** All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

**Section 7.** The effective date of this Ordinance shall be the date of adoption unless otherwise stated herein.

**Section 8.** The dates of first reading and adoption of this Ordinance are as follows:

First Reading: \_\_\_\_\_

Adoption: \_\_\_\_\_

This Ordinance having been properly considered and adopted by the City Council of the City of Hapeville, Georgia, the same is hereby APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF HAPEVILLE, GEORGIA**

\_\_\_\_\_  
Alan Hallman, Mayor

**ATTESTED:**

\_\_\_\_\_  
Jennifer Elkins, City Clerk

**APPROVED AS TO FORM:**

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Steve Fincher, City Attorney

**CITY OF HAPEVILLE  
STORMWATER UTILITY  
IMPLEMENTATION**

Presented by:

Michael J. Moffitt, P.E. (Keck & Wood, Inc.)

City Engineer

May, 2016

What is Stormwater?

Stormwater is rain or snowmelt that falls on streets, parking areas, rooftops, and other developed land and either flows directly into nearby streams or travels there through drainage systems, such as curbs and gutters, inlets, storm drains, detention ponds, and channels.

**Stormwater Issues:**

Flooding  
Pollution  
Poor Water Quality  
Soil Erosion



### Stormwater Management Purpose:

- Requirement of the MS4 National Pollutant Discharge Elimination System permit. Under this permit, City is required to educate local businesses and residents on the importance of point and non-point sources of stormwater contaminants, which ultimately affects the water you drink.
- Water quality is very important to Hapeville, its citizens and neighbors and everyone must learn ways to control or prevent non-point pollutant sources from reaching natural water courses.
- Examples: discharges by commercial and industrial activities, dumping or disposal of materials other than stormwater.
- Illicit discharges include sanitary wastewater, car wash wastewaters, improper oil disposal, laundry wastewater, and spills from roadway accidents.
- Given the age of the storm system, illicit discharge of sanitary wastewater in the storm system indicates a cross connection that should be evaluated.

### Our Program:

All local governments in the metropolitan Atlanta area are required to manage stormwater under the federal Clean Water Act's National Pollutant Discharge Elimination System. In 1990, the federal Storm Water Phase I Rule became law and required local governments in metropolitan areas to develop a Storm Water Management Program.

- Hapeville is required to have an MS4 (Municipal Separate Storm Sewer System) – a permit that establishes guidelines for governments to minimize pollutants in stormwater runoff to the “maximum extent practicable.”
- Issued initial permit in 1994, re-authorized permit in 1999, 2004, 2009, and 2014.
- Permit requires governments to identify where the storm sewer system discharges to creeks and streams; to develop a comprehensive local stormwater management program to reduce pollutants entering the public storm sewer system, including creeks and streams.

**Federal Requirements:**

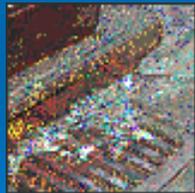
- Structural and Source Control Measures.
- Illicit Discharge Detection and Elimination Program.
- Industrial Facility Stormwater Runoff Control Program.
- Construction Site Management Program.
- SWMP (Storm Water Management Program) Activities in 303(d) Listed Areas.
- Public Education Program.
- SWMP Administration.

**Sources of Pollution:**



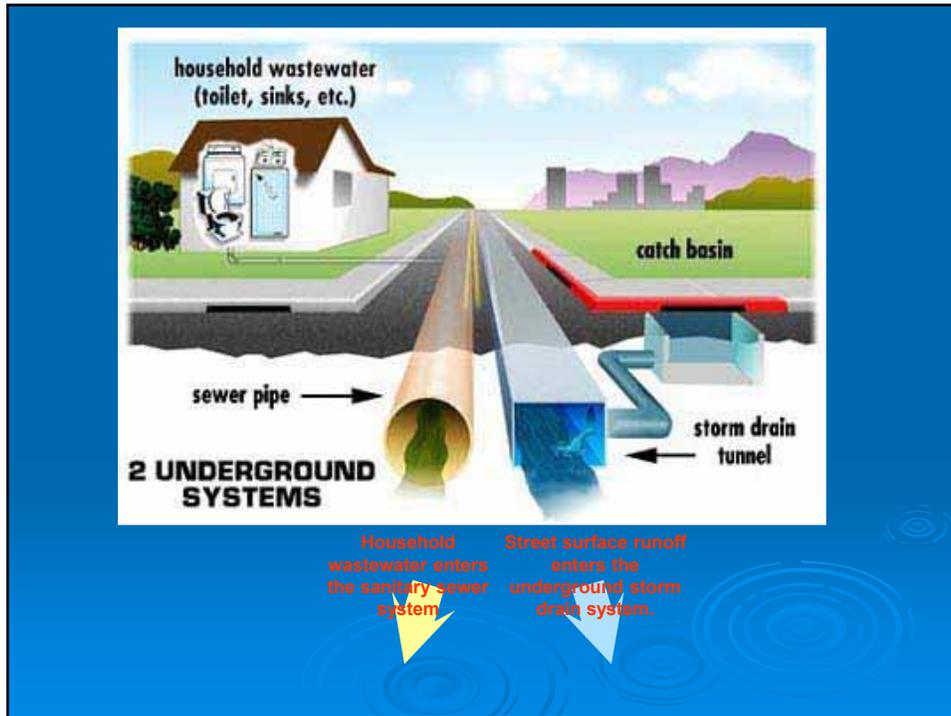
***Commercial***

Involves businesses that are retail oriented or perform services for customers. Examples include auto and service shops, gas stations, restaurants, and lawn care services.



***Residential***

Homes and yards, apartment complexes, and neighborhood yards.



## How Do We Address Stormwater?

- Stormwater Management Ordinance
- Soil Erosion and Sedimentation Control Ordinance
- Post-Development Stormwater for New Developments and Redevelopment
- Floodplain Management/Flood Damage Prevention/FEMA, NFIP compliance
- Illicit Discharge and Illegal Connection
- Litter Control
- Stream Buffer Protection
- Inspections
- Stormwater Utility



### Purpose of Stormwater Utility:

The purpose of a Stormwater Utility is to generate funds to support the Stormwater Management Program including:

- Maintenance of the drainage infrastructure.
- Response to drainage complaints.
- Repair of drainage system failures.
- Capital Improvement Projects for drainage problems.
- Capital projects for watershed protection and channel restoration.
- Administration of the Stormwater Management Program.
- \$1.1 million in stormwater improvements from current & future grants (N. Central, N. Fulton, Dogwood & Rail Facilities Projects)

## Stormwater Utility Fee Funds Repairs on Existing Infrastructure:



## Stormwater Utility User Fee:

In general each entity in the City pays a monthly fee proportional to the amount of impervious area compared to a “Equivalent Residential Unit”. In the metro Atlanta area fees range from around \$3.00 to \$9.00 per ERU per month.

- Mayor and Council set the stormwater charge per ERU based on cost to run the Stormwater Management Program.
- Each single family dwelling unit is billed one ERU regardless of lot or house size.
- Multifamily developments can be billed as multiples of ERU based on number of units or amount of impervious area.
- All other entities are billed as multiples of ERU based on impervious area.

### Equivalent Residential Unit:

An Equivalent Residential Unit is the “average” impervious area for single family dwellings. In Hapeville for the ten single family residential zoning districts (R-1 to R-5, R-SF, R-I, V, C-R) the average impervious area is just under 2,400 square feet. That is made up of house area, driveway, sidewalks and patios.

- The range of impervious area in an “ERU” varies by jurisdiction. Examples in the area vary from 2,200 square feet in Griffin to 3,523 square feet in College Park.
- Similarly, example monthly fees for an “ERU” in the area varies from \$3.18 in Griffin to \$9.15 in East Point.

Sample Stormwater Utility Fees for Neighboring Jurisdictions

Jurisdiction	ERU Imperv. Area, SF	Monthly ERU Charge
College Park	3,523	\$3.91
Fairburn	3,300	\$4.08
Forest Park	2,950	\$3.75
East Point	3,200	\$9.15
Union City	2,800	\$4.00
Uninc. Clayton County	2,950	\$3.75
Hapeville ( Proposed)	2,400	\$3.50

# HAPEVILLE STORMWATER UTILITY

Impervious Area Single Family Residential Districts - ERU Determination										
Zoning District	R-0	R-1	R-2(S)	R-3(S)	R-4(S)	R-5(S)	R-SF	R-I(S)	V(S)	CR(S)
(S)=Single Fam.Unit										
Min. Lot Area, SF	10,000	6,750	8,500	8,500	8,500	4,000	4,000	4,000	4,000	8,500
Min. Lot Width, Ft	60	50	60	60	60	40	40	40	50	60
Lot Depth, Ft	166.7	135	141.7	141.7	141.7	100	100	100	80	141.7
Min. Dwell. Area SF	1,600	1,600	1,400	1,600	1,400	1,600	1,000	1,400	1,600	1,600
Front Setback, Ft	30	15	15	15	15	15	15	15	15	15
Rear Setback, Ft	25	25	25	25	25	20	20	25	20	10
Side Setback, Ft	6	5	6	5	8	5	5	5	5	5
Probable Impervious Area, SF										
House (1' overhang)	1,764	1,764	1,554	1,764	1,554	1,764	1,130	1,554	1,764	1,764
Driveway (Note 2)	600	300	300	300	300	300	300	300	300	300
Sidewalk (Note 3)	147	147	133	147	133	147	107	133	147	147
Patio (Note 4)	300	300	263	300	263	300	188	263	300	300
Totals	2,811	2,511	2,250	2,511	2,250	2,511	1,725	2,250	2,511	2,511
						Average SF Impervious Area =				2,384
						Use ERU SF Impervious Area =				2,400
Notes:										
1. House w/1' overhang area based on min. dwelling area					3. Sidewalk = 4 ft wide walk to front door@ house ctr					
2. Driveway uses front setback distance times 20 feet wide					4. Patio based on dwelling area ratio to 1,600 SF D.A.					

Stormwater Utility Customer Base in Hapeville			
Customer Type	Number of Parcels	Avg. ERU's	Maximum ERU's
Single Family Residential	1,889	1.0	1.0
Commercial/ Industrial/ Public/ Institutional/ Multifamily	353	19.13	1,989.33
Approximate Total Monthly \$ @ \$3.50/ERU			\$29,800
Approximate Total Annual \$ @ \$3.50/ERU			\$357,000

Stormwater Utility Fund Projected Annual Budget

<u>Item Description</u>	<u>Annual \$ Amount</u>
Annual EPD SWMP Report Preparation	\$15,000
Annual Stormwater Field Inspections & Reports	\$10,000
Annual Storm System Capital Repairs, Replacements	\$100,000
GIS Mapping, GPS Locates of Storm System Facilities	\$40,000
Annual Utility Staffing, Testing, and Equipment	<u>\$191,000</u>
Total Annual Stormwater Utility Expenses	\$356,000
Anticipated Revenue at \$3.50 per month per ERU	<u>\$357,000</u>
Anticipated Income over Expenses	\$1,000





July 29, 2016

Allie OBrien  
City of Hapeville  
3468 N Fulton Avenue  
Hapeville, GA 30354

Dear Allie OBrien,

Congratulations! Target and KaBOOM! have selected City of Hapeville for a Build it with KaBOOM! Playground Grant! We are excited to help you build a community playground at Master Park, 488 King Arnold Street, Hapeville, GA 30354.

The Letter of Agreement outlines your roles and responsibilities, as discussed. If you require an original signed agreement for your records, please also send two signed copies of the Letter of Agreement to my attention by registered mail. KaBOOM! will send an original back to you for your files.

**Please email me a signed copy of the Letter of Agreement by 8/4/2016 at 5 p.m. ET.** Please notify me immediately if you cannot comply with this deadline as it is KaBOOM! policy to have the signed Letter of Agreement on file no later than three business days before Design Day.

KaBOOM! will send you: (1) the executed contract by mail; (2) an invoice for the **\$8,500** Community Partner Contribution; and (3) a written request for a certificate of insurance adding KaBOOM! and the Funding Partner to your general liability insurance policy. Please note that the payment of the invoice and the certificate of insurance are due 30 days before your build day.

Attached to this email you will also find a Welcome Packet with many resources to help you ensure a successful project, as well as a Design Day flyer that you may begin circulating throughout the community.

### **Important Dates**

Your Design Day will take place on **TBD** to kick off your project. By this date (or sooner), please be sure to return your signed soil and utility forms to your project manager. For the next several weeks, you will be working with your play committee and your project manager to plan for your playground Build Day, which will take place on **TBD**.

## About your Funding Partner

### Target Enterprise, Inc.

Minneapolis-based Target Corporation (NYSE: TGT) serves guests at 1,793 stores and at Target.com. Since 1946, Target has given 5 percent of its profit to communities, which today equals more than \$4 million a week. For more information, visit [Target.com/Pressroom](http://Target.com/Pressroom). For a behind-the-scenes look at Target, visit [Target.com/abullseyeview](http://Target.com/abullseyeview) or follow @TargetNews on Twitter.

## Project Contacts

As you transition to planning your project, please keep these KaBOOM! contacts' information handy!

### KaBOOM! Communications Manager:

Tamara Grider, [Tgrider@kaboom.org](mailto:Tgrider@kaboom.org); 202-464-6196

## Playability Survey

We are very excited to bring more play to children's lives by building a playspace with you. Beyond building playgrounds, KaBOOM! is working with cities to make communities more kid and family friendly. We are asking for your help; by taking a quick survey about how kid friendly and playful your community is, we can gather information that will help community leaders make good decisions that consider the viewpoint of kids and families. We ask that you and your stakeholders, including parents, caregivers, and volunteers, take a few minutes to complete the [survey](#). Thank you for participating!

I look forward to receiving your signed agreements, and welcome any questions or comments that you might have.

Sincerely,

Sally Dorman  
[sdorman@kaboom.org](mailto:sdorman@kaboom.org)  
(202) 464-6412

Copy: KaBOOM! Project Management files



## COMMUNITY PARTNER PLAYGROUND AGREEMENT

July 29, 2016

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that City of Hapeville (referred to herein as the Community Partner) has agreed to collaborate with KaBOOM! and Target Enterprise, Inc. (referred to herein as the Funding Partner) in the construction of a new playground at Master Park, 488 King Arnold Street, Hapeville, GA 30354 (the "Project"). This Community Partner Playground Agreement (this "Agreement"), which sets forth the Community Partner's obligations in connection with the Project and certain matters on which the parties have agreed, will, when executed by the duly authorized representatives of each party, supersede any prior agreements and represent the complete legally binding agreement between the parties regarding the Project.

1. Obligations of the Community Partner. The Community Partner shall work with KaBOOM! and the Funding Partner as well as community residents to design, plan and build the Project. By executing this Agreement, the Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
  - (a) Fundraising. In support of the Project, the Community Partner must contribute \$8,500 to KaBOOM!, which will apply the funds directly to the purchase of playground equipment. KaBOOM! will invoice the Community Partner for such amount promptly following the execution of this Agreement, which amount must be paid in full at least thirty (30) days prior to the Project's Build Day (as defined below).
  - (b) Project Site.
    - (i) Ownership. At the time of execution of this Agreement, the Community Partner shall provide KaBOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Community Partner or a letter from the property owner showing approval for the Project. The Community Partner is the owner of the playground in its entirety, for the lifetime of the playground, including the equipment and/or safety surfacing purchased by KaBOOM! and/or the Funding Partner.
    - (ii) Permits. Prior to Build Day, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playground in compliance with applicable laws and regulations.
    - (iii) Preparation. The Community Partner shall ensure that the Project site is safe for volunteers and children, which responsibility includes: (1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Day; (2) preparing the site for the installation of the Project at least two weeks before Build Day, which includes removing existing playground equipment, footers and safety surfacing, grading the land, removing fencing and performing soil tests; (3) conducting up to two (2) utility checks as reasonably requested by KaBOOM! with the appropriate utility companies, with the first test being completed on or before Design Day (as defined below) and with all utility check documentation provided upon completion to the KaBOOM! project manager who shall supervise the planning and installation of the playground (the "Project Manager"); and (4) conducting up to two (2) soil site tests as reasonably requested by KaBOOM!, with the first test being completed on or before Design Day and with all soil check documentation provided to the Project Manager upon completion. The Community Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
    - (iv) Safety and Security. The Community Partner shall ensure the security of equipment, tools, supplies and well being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
    - (v) Maintenance. Maintenance of the playground facility and supervision of its use is the sole responsibility of the Community Partner. The Community Partner shall collaborate with KaBOOM! during the Project

planning process to develop a maintenance program for the playground and, with the support of the property owner (if owner is a separate party), shall maintain the playground and the property before and after the Build Day to ensure a safe and attractive playspace. In furtherance of the foregoing, in the event any playground equipment included in the Project no longer is permitted for any reason to be located at its original site of construction or such site is no longer controlled by the Community Partner for any reason, then the Community Partner promptly shall notify KaBOOM! following its becoming aware of such situation and shall, at the Community Partner's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the playground equipment (including any permanent signage and other fixtures) to an alternate site that serves children or to ensure that the successor controlling person of such site shall continue to make such playground available to children in the same manner contemplated as of the Build Day and maintain (or permit the Community Partner to maintain) such playground in accordance with the maintenance program. In addition, the Community Partner shall accept and maintain engineered wood fiber as playground safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playground. Guidance and materials for the purpose of developing a maintenance plan for the playground are available, upon request, from the playground equipment and safety surfacing manufacturers, including Playworld Systems, Inc .

- (c) Design Day. The Community Partner agrees to host a KaBOOM!-facilitated "Design Day" with at least twenty (20) adult volunteers and twenty (20) children. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- (d) Build Day. The Community Partner shall recruit 75 adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on TBD and which is referred to herein as the Build Day. The Community Partner shall ensure that all volunteers sign a waiver. On the Build Day, the Community Partner shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.
- (e) Promotion; Intellectual Property. The Community Partner shall seek prior approval from KaBOOM! and/or the Funding Partner for any materials that reference the Project or contain the name, trademarks, service marks, logos and other intellectual property (collectively, and together with all goodwill attached or which shall become attached to any of the them, the "Marks") of KaBOOM! and/or the Funding Partner, including press releases, fliers and promotional materials. The Community Partner acknowledges and agrees that each of KaBOOM! and the Funding Partner is the sole owner of all right, title and interest in and to its respective Marks. The parties acknowledge that KaBOOM! and the Funding Partner may take all steps to protect their Marks as they deem appropriate. Any use of the Marks will inure to the sole benefit of KaBOOM! or the Funding Partner (as applicable). The Community Partner shall not use the Marks in any manner that would harm the reputation of KaBOOM! or the Funding Partner or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the Community Partner shall cease all use of the Marks. The Community Partner shall collaborate with KaBOOM! and the Funding Partner to secure media coverage for the Project.
- (f) Signage. The Community Partner shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, which shall be substantially in the form provided to the Community Partner during the application process and shall be 12 ¼ inches wide by 30 ¼ inches tall and mounted on poles in a mutually agreed location.
- (g) Playground Costs. The Community Partner is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the Community Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- (h) Warranty. The playground equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers, a copy of which may be obtained, upon request, from such manufacturers. The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KaBOOM! nor the Funding Partner nor any of their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any

representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including its quality, mechanical condition or fitness for a particular purpose.

- (i) Insurance. Name of Community Partner is self-insured and is responsible for providing coverage for its own employees and against liability for bodily injury, death and property damage that may arise out of or be based on the use of the playground at "Community Partner location", from 7 (seven) calendar days before the Build Day and for a minimum of one year afterward, in each case, in amounts not less than one million dollars (\$1,000,000). This self-insurance shall be primary over any other insurance covering KaBOOM! and its funding partners.
- (j) Indemnification. The Community Partner shall indemnify, defend and hold harmless KaBOOM!, the Funding Partner and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives from any and all losses, liabilities, investigations, inquiries, claims, actions, fees and expenses (including interest and penalties due and payable with respect thereto and reasonable attorneys' and accountants' fees and any other reasonable out-of-pocket expenses incurred in investigating, preparing, defending or settling any action), including any of the foregoing arising under, out of or in connection with any breach of this Agreement, any actions associated with this Project or resulting from the use of any playground property and equipment, including those for personal injury, death, or property damage, maintenance and repair; except to the extent resulting from the gross negligence or willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.
- (k) Data and Reporting Requirements. The Community Partner shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KaBOOM! to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by KaBOOM! within 2 weeks from the Build Day and a 6-month survey provided by KaBOOM! within 7 months from the Build Day.

## 2. Obligations of KaBOOM!

- (a) Playground Build. KaBOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
  - (i) Coordinate Funding Partner participation, facilitate playground design, including regular planning meetings, and work with vendors to procure equipment and materials in a timely manner, except to the extent that safety surfacing other than engineered wood fiber is used, which shall be procured by the Community Partner.
  - (ii) Manage construction logistics for the Project, coordinate playground site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available on the Build Day.
  - (iii) Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
  - (iv) Make available certain educational and promotional materials related to the Project.
- (b) Inspection. KaBOOM!, in collaboration with the Community Partner, will secure a Certified Playground Safety Inspector to review the playground structure at the conclusion of the Build Day (or, if KaBOOM! assumes responsibility for the playground construction going beyond one day, at the conclusion of the installation) to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the Build Day is not completed on the Build Day due to failure of the Community Partner, in which case the Community Partner shall secure the Certified Playground Safety Inspector.
- (c) Promotion. KaBOOM! will provide proposed promotional materials relating to the Project for the Community Partner's review and approval, which approval shall not be unreasonably withheld or delayed.
- (d) Website Listing. KaBOOM! will place the playground on its list of KaBOOM! builds on the KaBOOM! website and KaBOOM! will send information to the Community Partner on playground maintenance programming and enhancements.

- (e) Post-Build Day. The Community Partner shall (i) within one week following the Build Day, complete and submit a Post Build Report, in the form to be made available by KaBOOM!, and (ii) shall use its commercially reasonable efforts to provide, and otherwise shall cooperate in good faith with KaBOOM! regarding obtaining, such other information related to the Project as KaBOOM! from time to time may request.
3. Build Day Postponement. The Build Day shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playground. The decision to postpone the Build Day will be made by majority agreement of the representatives of KaBOOM!, the Community Partner and the Funding Partner, except where such decision must be made by KaBOOM! on the construction site and representatives of the Community Partner and the Funding Partner are not available for consultation. In the event that the Build Day is postponed, KaBOOM!, the Community Partner and the Funding Partner shall develop a plan for rescheduling the Build Day at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Day, including, without limitation, equipment, labor and materials, storage and travel costs and expenses; *provided, however*, that the Funding Partner shall be notified of the estimated amount of such additional expenses in connection with rescheduling of the Build Day. Notwithstanding the foregoing, in the event that the date of the Build Day is cancelled or changed as a result of the Community Partner's failure to satisfy its obligations in connection with the Project, then the Community Partner shall be liable to KaBOOM! and the Funding Partner for all such additional expenses related to the rescheduled Build Day.
4. Funding Partner Relations. KaBOOM! has a separate contract with the Funding Partner pursuant to which the Funding Partner has agreed to provide financial and human resources for the Project. In recognition of the Funding Partner's contribution of such resources, the Funding Partner shall receive first placement on any recognition materials developed for the Project, including playground signage, banners, T-shirts, press releases, website and newsletter stories, and flyers, and the Community Partner shall not solicit sponsors or donors in relation to the Project whose products or services directly compete with the products or services of the Funding Partner as identified to the Community Partner by KaBOOM! and/or the Funding Partner. In the event the Community Partner solicits other sponsors or donors, then the Community Partner shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.
5. Termination. In the event that the Community Partner fails to make the payments required under Section 1(a) or otherwise breaches this Agreement, KaBOOM! may terminate this Agreement upon written notice to the Community Partner of such termination. Furthermore, if either party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and either party may terminate this Agreement if the other is unable to perform any obligation hereunder for a period longer than ten (10) calendar days due to such force majeure event, in which case KaBOOM! shall refund to the Community Partner any amounts paid to KaBOOM!, less expenses already committed and/or incurred prior to the date of such termination. If, upon termination as provided herein, the sum due KaBOOM! by the Community Partner exceeds the sum paid to KaBOOM! hereunder, the Community Partner shall pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within thirty (30) days of invoice. Except as set forth above, upon any termination, this Agreement shall become void and have no effect, and no party shall have any liability to the other party, except that nothing herein will relieve any party from liability for any intentional breach of this Agreement prior to such termination.
6. General Provisions. The Community Partner represents to KaBOOM! that all information provided by it to KaBOOM!, including in the Playground Profile Application, is true, correct and complete in all respects and does not omit any information relevant to the Project. Each party has all requisite power and authority, including any necessary approval by its governing body, to execute and deliver this Agreement, and to perform its obligations hereunder. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and where expressly stated, their affiliates and representatives. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to conflicts of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby. This

Agreement may be altered, modified or amended only by a written document signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such party's signature below. The Funding Partner shall be an intended third party beneficiary of Sections 1(b), (e), (f), (g), (h), (i) and (j) and Sections 2(b), 3, 4 and 6 of this Agreement and is entitled to enforce its rights under such sections as if it were a party to this Agreement.

By executing this Community Partner Playground Agreement where indicated below, each of KaBOOM! and the Community Partner agrees, as of the date identified above, to be legally bound by all of the terms and provisions set forth above.

**City of Hapeville**

**KaBOOM!, Inc.**

By: \_\_\_\_\_  
Name: Alan Hallman  
Title: Mayor

By: \_\_\_\_\_  
Name: Gerry Megas  
Title: Chief Financial Officer

Address:  
3468 N Fulton Avenue  
Hapeville, GA 30354  
T: (404) 669-8269  
e-mail: ahallman@hapeville.org

Address:  
4301 Connecticut Ave. NW, Suite ML-1  
Washington, DC 20008  
T: (202) 464- 6180  
F: (202) 659-0210  
e-mail: gmegas@kaboom.org

**Contact information for the person who should receive KaBOOM! invoices:**

Name: Allie O'Brien

Email: aobrien@hapeville.org

**STATE OF GEORGIA**

**CITY OF HAPEVILLE**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF HAPEVILLE, GEORGIA IMPOSING A MORATORIUM OF APPROXIMATELY ONE HUNDRED TWENTY-SIX (126) DAYS ON THE ACCEPTANCE OF APPLICATIONS FOR OCCUPATION TAX CERTIFICATES, PERMITS, LICENSES, INSPECTIONS, SITE PLAN APPROVALS AND DESIGN APPROVALS RELATED TO THE DEVELOPMENT OF A BAIL BOND OFFICE, A PRIVATE PROBATION OFFICE, A CHECK CASHING OFFICE, OR A PAWNSHOP; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

**WHEREAS**, the City of Hapeville has been vested with substantial powers, rights and functions to generally regulate the practice, conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City of Hapeville; and

**WHEREAS**, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and

[0168-0049/233901/3]

**WHEREAS**, the Courts take judicial notice of a local government's inherent ability to impose moratoria on an emergency basis; and

**WHEREAS**, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*, 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." The City of Hapeville has found that the interests of the public necessitate the enactment of a moratorium for health, safety, morals and general welfare purposes by means which are reasonable and not unduly oppressive; and

**WHEREAS**, the Mayor and Council of the City of Hapeville have, as a part of planning, zoning and growth management, been in review of the City's Zoning Ordinances and have been studying the City's best estimates and projections of the type of development which could be anticipated within the City of Hapeville; and

**WHEREAS**, the Mayor and Council deem it important to develop a comprehensive plan which integrates all of these concerns and therefore consider this moratorium a proper exercise of its police powers; and

**WHEREAS**, the Mayor and Council therefore consider it paramount that land use regulation continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the City of Hapeville. The Mayor and Council have always had a strong interest in growth management so as to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; in particular, the lessening of congestion on City streets, security of the public from crime and other  
[0168-0049/233901/3]

dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the City including access to air and light, and facilitation of the adequate provision of transportation and other public requirements; and

**WHEREAS**, it is the belief of the Mayor and Council of the City of Hapeville that the concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as well as physical, aesthetic as well as monetary; and that it is within the power of the City "to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954); *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). It is also the opinion of the City that "general welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the City, making the most appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting the economic well-being of the community, facilitating adequate provision of public services, and the preservation of the resources of the City; and

**WHEREAS**, the Mayor and Council are, and have been interested in, developing a cohesive and coherent policy regarding certain uses in the City, and have intended to promote community development through stability, predictability and balanced growth which will further the prosperity of the City as a whole.

**BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HAPEVILLE** and by the authority of the same:

**SECTION I.**  
**FINDINGS OF FACT**

The Mayor and Council of the City of Hapeville hereby make the following findings of fact:

- (a) It appears that the City's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the City of Hapeville as they relate to the development of bail bond offices, private probation offices, check cashing offices, or pawnshops;
  - (b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and City of Hapeville if the current land use regulation scheme in and for the above described use in the City were to be utilized by property owners prior to a more thorough review;
  - (c) The City's ongoing revision of its code, comprehensive plan and zoning ordinances requires that a limited cessation of development and building permits, occupation tax permits, and other licenses and permits, with respect to the above described use, be enacted;
  - (d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such developments, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the City; and
  - (e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable and do not constitute land use when such moratoria are applied throughout the
- [0168-0049/233901/3]

City under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001).

## **SECTION II.**

### **IMPOSITION OF MORATORIUM**

- (a) There is hereby imposed a moratorium of approximately one hundred twenty-six (126) days on the acceptance by the staff of the City of Hapeville of applications for occupation tax certificates, rezoning, variances, permits, inspections, site plan approvals or design approvals for the development of any “bail bond office” “private probation office,” “check cashing office”, “pawnshop” or for any other license or permit, for the purpose of authorizing such or similar uses as described in the Zoning Ordinance of the City of Hapeville.
- (b) For the purposes of this ordinance, the term “bail bond office” shall mean any office, building or other facility from which any person, company, corporation, partnership, limited partnership or any other entity operates a business that acts as a surety for a person accused of a crime and pledges money or property as bail to insure the appearance of such person in a court proceeding concerning such accusations.
- (c) For the purpose of this ordinance, the term “private probation office” shall mean any office, building or other facility from which any person, company, corporation, partnership, limited partnership, enterprise, agency or any other entity pursuant to a written contract with a court of a county or a municipality, operates a business that provides probation supervision, counseling and collection services for all monies to be paid by a defendant according to the terms of a sentence imposed on such defendant as

well any monies which by operation of law are to be paid by such defendant in consequence of a sentence, and other probation services for defendants convicted in such court and placed on probation.

(d) For purposes of this ordinance, the term “check cashing office” shall mean any office, building or other facility from which any person, company, corporation, partnership, limited partnership or any other entity operates a business that cashes payroll, personal and other checks for the general public for a fee. The term does not include a bank, savings and loan association or credit union that is incorporated or organized under the law of the United States or any state thereof. Nor does this term include an office, building or other facility whose primary business would be retail sales or services and that would cash checks only as an incidental, accessory convenience service to its customers.

(e) For purposes of this ordinance, the term “pawnshop” shall mean any office, building or other facility from which any person, company, corporation, partnership, limited partnership or any other entity operates a business that loans money on the security of pledged goods (as that term is defined in O.C.G.A. § 44-12-130(5)), or purchases tangible personal property on a condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or purchases tangible personal property from persons or sources other than manufacturers or licensed dealers.

(f) The duration of this moratorium shall be until the City adopts a revision to the City Code of the City of Hapeville related to the above referenced use, or until December 7, 2016, whichever first occurs.

[0168-0049/233901/3]

- (g) This moratorium shall be effective as of August 3, 2016.
- (h) The provisions of this Ordinance shall not affect the issuance of certificates, licenses, permits or site or design plans that have received preliminary or final approval by the City on or before the effective date of this Ordinance.
- (i) As of the effective date of this Ordinance, no applications for occupation tax certificates, rezoning, variances, permits, inspections, site plan approvals or design approvals for the above described use will be accepted by any agent, employee or officer of the City with respect to any property in the City of Hapeville, and any such document so accepted for filing will be deemed in error, null and void, and of no effect whatsoever and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such permit shall be unreasonable.
- (j) The following procedures shall be put in place immediately. Under *Cannon v. Clayton County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in position by expenditures and reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to this case, the City of Hapeville recognizes that, unknown to the City, de facto vesting may have occurred. The following procedures are established to provide exemptions from the moratorium where vesting has occurred:

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A written application, including verified supporting data, documents and facts, may be made requesting a review by the Mayor and Council at a scheduled meeting of any facts or circumstances which the applicant feels substantiates a claim for vesting and the grant of an exemption.

### **SECTION III.**

(a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, [0168-0049/233901/3]

clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

**SECTION IV.**

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

**SECTION V.**

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference, as if fully set out herein.

**ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF HAPEVILLE, GEORGIA**

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**Alan H. Hallman**, Mayor

**ATTEST:**

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**Jennifer Elkins**, City Clerk

**APPROVED AS TO FORM:**

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**Steve Fincher**, City Attorney

[0168-0049/233901/3]

STATE OF GEORGIA  
COUNTY OF FULTON

COOPERATION AGREEMENT

This Agreement is made and entered into on the date last signed below, by and between the CITY OF HAPEVILLE, a political subdivision of the State of Georgia (hereinafter called the "City"), and the AIRPORT WEST COMMUNITY IMPROVEMENT DISTRICT Board (hereinafter called the "CID Board").

WHEREAS, the Airport West Community Improvement District (hereinafter called the "District") was created pursuant to an act of the Georgia Legislature, 1987 Ga. L. 5460, such act (hereinafter "Local Act") being authorized pursuant to Article IX, Section VII, ¶ 1 of the Constitution of the State of Georgia, as amended in 1984;

WHEREAS, the District lies partially within the City and is intended to provide a means to supplement and enhance, but not replace, government services and facilities in the District; and

WHEREAS, the Local Act requires that the services and facilities furnished within the District pursuant to said Act shall be provided for in a cooperation agreement executed jointly by the CID Board and the governing bodies within which the District is located.

NOW, THEREFORE, in consideration of the mutual covenants and benefits flowing to the parties, the City and the CID Board do agree as follows:

1.

This Agreement shall in no way limit the authority of the City to provide services or facilities within the District. The City shall retain full and complete

authority and control over any of its facilities located within the District.

2.

The City shall not reduce its services and facilities in the District for the purpose of replacing the City's cost with District funds as the parties intend said funds to be utilized to supplement and enhance what the City would otherwise provide had no District been created. This Agreement does not affect the authority of the City to increase or decrease the level of any particular service provided in the course of its operations and within the scope of those powers granted or conferred to it under any applicable law.

3.

Each party acknowledges that the CID Board is authorized to exercise its powers for the provision of the following services and facilities:

- 1) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads;
- 2) Parks and recreation areas and facilities;
- 3) Stormwater and sewage collection and disposal systems;
- 4) Development, storage, treatment, purification and distribution of water;
- 5) Public Transportation, including, but not limited to, services intended to reduce the volume of automobile traffic, to transport two or more persons, to improve air quality, and to provide bicycle and pedestrian facilities and the operation of a traffic management association or similar entity;
- 6) Terminal and dock facilities and parking facilities; and
- 7) Such other services and facilities as may be provided for by general law.

4.

The CID Board shall levy a tax millage as provided by law and shall notify the Fulton County Tax Commissioner of the amount of the levy, in writing, so that the levy may be included on the Fulton County ad valorem tax bills. The proceeds collected by Fulton County will be transmitted by Fulton County to the CID Board within thirty (30) days after its collection so as to be expended by the CID Board only for the purposes for which the District was created.

5.

Neither the District nor the CID Board shall have any power or authority to contract in the name of, encumber or create debt for or on behalf of the City.

6.

The City and the CID Board shall advise each other of their respective plans for study, design, improvement, and governmental services within the District.

7.

Each of the parties hereto shall endeavor to act in such manner so as to coordinate actions for the maximum improvement of the City and District and each shall endeavor not to duplicate services and actions so as to obtain efficiency of effort.

8.

The parties agree that joint efforts are usually for the benefit of the CID and the City. The City may endeavor to furnish staff support for the benefit of the District when such services are requested by the CID Board, but shall not be required to furnish such staff support.

9.

This Agreement shall have a duration of not more than fifty (50) years, or expire upon dissolution of the CID as provided by law, whichever shall occur first, and shall not be modified except by formal written action of both parties.

WHEREFORE, the parties have caused this Intergovernmental Agreement to be executed under seal by authorized representatives of each entity on the day and year set forth below.

**AIRPORT WEST COMMUNITY IMPROVEMENT DISTRICT**

Attest:

Shannon James  
Secretary

By: Malcolm Mouton  
Chairman of the Board

Date: 7/21/2016

**CITY OF HAPEVILLE, GEORGIA**

Attest:

\_\_\_\_\_  
City Clerk

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

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

Approved as to form:

\_\_\_\_\_  
City Attorney