

STATE OF GEORGIA

CITY OF HAPEVILLE

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

AN ORDINANCE TO AMEND CHAPTER 93, ZONING, OF THE CODE OF ORDINANCES OF THE CITY OF HAPEVILLE, GEORGIA; TO AMEND THE PERMITTED USES IN THE C-1 (“RETAIL COMMERCIAL”), N-C (“NEIGHBORHOOD COMMERCIAL”) AND V (“VILLAGE”) ZONES; TO CREATE DEFINITIONS REGARDING CONSUMER FIREWORKS; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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

**WHEREAS**, the Mayor and Council 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; 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. 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; and in particular the lessening of congestion on City streets, security of the public from crime and other 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 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.” Kelo v. City of New London, 545 U.S. 469 (2005); Berman v. Parker, 348 U.S. 26 (1954). 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; and

**WHEREAS**, on May 5, 2015, the Governor of the State of Georgia signed into law, House Bill 110, which became effective on July 1, 2015, amending applicable chapters of the Georgia Code relating to the regulation of consumer fireworks and the role of local governments in regulating and prohibiting the sale and use of consumer fireworks; and

**WHEREAS**, on April 26, 2016, the Governor of the State of Georgia signed into law, House Bill 727, which became effective on April 26, 2016, amending applicable chapters of the Georgia Code relating to the regulation of consumer fireworks and the role of local governments in regulating and prohibiting the sale and use of consumer fireworks; and

**WHEREAS**, House Bills 110 and 727, contain provisions regarding the sale of consumer fireworks in Consumer Fireworks Retail Sales Facilities (“Facilities”) and Consumer Fireworks Retail Sales Stands (“Stands”); and

**WHEREAS**, the City must determine, pursuant to its powers to zone businesses within its city limits, the most appropriate locations in which such Facilities and Stands can exist; and

**WHEREAS**, currently, the City’s zoning ordinance contains no provisions regarding the location of such Facilities and Stands within city limits; and

**WHEREAS**, the Mayor and Council find it desirable and in the interest of the health, safety, and welfare of the citizens of the City to amend certain provisions of the City’s Zoning Ordinance to regulate the location of such Facilities and Stands.

**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.** That the City’s Code of Ordinances is hereby amended by inserting definitions of “Consumer Fireworks,” “Consumer Fireworks Retail Sales Facilities,” and “Consumer Fireworks Retail Sales Stands,” after the paragraph establishing the definition of “Condominium” and before the paragraph establishing the definition of “Curb Break” in Section 93-1-2, Definitions, of Article 1, Title, definitions and application of regulations, of Chapter 93, Zoning, and inserting the following text to read and to be codified as follows:

*“Consumer Fireworks.* Any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1, and additionally shall mean Roman candles. The definition of Consumer Fireworks shall have the same meaning as set forth in O.C.G.A. § 25-10-1 and NFPA 1124 should that definition differ from the definition in this subsection.

*Consumer Fireworks Retail Sales Facility.* A permanent or temporary building or structure, Consumer Fireworks Retail Sales Stand, tent, canopy, or membrane structure that is used primarily for the retail display and sale of Consumer Fireworks to the public. The definition of Consumer Fireworks Retail Sales Facility shall have the same meaning as set forth in O.C.G.A. § 25-10-1 and NFPA 1124 should that definition differ from the definition in this subsection.

*Consumer Fireworks Retail Sales Stand.* A permanent or temporary building or structure that has a floor area of not greater than 800 ft<sup>2</sup> (74m<sup>2</sup>), other than tents, canopies, or membrane structures, that is used primarily for the retail display and sale of consumer fireworks to the public. The definition of Consumer Fireworks Retail Sales Stand shall have the same meaning as set forth in O.C.G.A. § 25-10-1 and NFPA 1124 should that definition differ from the definition in this subsection.”

**Section 2.** That the City’s Code of Ordinances is hereby amended by inserting the definition of “NFPA 1124” after the paragraph establishing the definition of “Mayor and council” and before the paragraph establishing the definition of “Nursery” in Section 93-1-2, Definitions, of Article 1, Title, definitions and application of regulations, of Chapter 93, Zoning, and inserting the following text to read and to be codified as follows:

*“NFPA 1124.* National Fire Protection Association Standard 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition.”

**Section 3.** That the City’s Code of Ordinances is hereby amended by inserting new Subsections (29) and (30) to Section 93-13-3, Permitted uses, of Article 13, C-1 Zone (Retail Commercial), of Chapter 93, Zoning, and inserting the following text to read and to be codified as follows:

“(29) Consumer Fireworks Retail Sales Facilities  
(30) Consumer Fireworks Retail Sales Stands.”

**Section 4.** That the City’s Code of Ordinances is hereby amended by deleting the existing text of Subsection (a)(1) Section 93-7-2, Permitted uses, of Article 7, N-C Zone (Neighborhood Commercial), of Chapter 93, Zoning, and inserting the following text to read and to be codified as follows:

“(1) All uses permitted in the C-1 Zone, except for Consumer Fireworks Retail Sales Facilities and Consumer Fireworks Retail Sales Stands.”

**Section 5.** That the City’s Code of Ordinances is hereby amended by deleting the existing text of Subsection (2) Section 93-11.1-2, Permitted uses, of Article 11.1, V Zone (Village), of Chapter 93, Zoning, and inserting the following text to read and to be codified as follows:

“(2) Any use permitted in the C-1 Zone, except for Consumer Fireworks Retail Sales Facilities and Consumer Fireworks Retail Sales Stands, and subject to the requirements of this article.”

**Section 6.** The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 7.**

(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 8.** All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

**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 \_\_\_\_\_, 2015.

[SIGNATURES CONTINUED TO NEXT PAGE]

**CITY OF HAPEVILLE, GEORGIA**

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**ALAN HALLMAN**, Mayor

**ATTEST:**

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**JENNIFER ELKINS**, City Clerk

**APPROVED AS TO FORM:**

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**STEVE FINCHER**, City Attorney