

**ORDINANCE
NO. 10-01**

ADOPTING AND ENACTING A “CODE OF ORDINANCES, CITY OF VARNELL, GEORGIA” FOR PURPOSES OF STATING AND REVISING EXISTING LAW AND ORDINANCES OF THE CITY OF VARNELL AND OF EXTENDING THE LAW OF THE CITY OF VARNELL IN THE FUTURE BY ORDINANCES TO BE ENACTED; TO PROVIDE FOR THE CONSTRUCTION THEREOF; TO PROVIDE THAT EXISTING ORDINANCES AND LAW OF THE CITY NOT ADDRESSED HEREIN SHALL NOT BE SUPERSEDED OR REPEALED HEREBY BUT SHALL EACH REMAIN IN FULL FORCE AND EFFECT; TO REPEAL ORDINANCES WHERE PROVISION IS HEREWITH MADE FOR THEIR SUBJECT MATTER WITHOUT REVIVING ANY OTHER ORDINANCE OF THE SAME SUBJECT MATTER IN FORCE BEFORE OR AT THE TIME THE ORDINANCE REPEALED TOOK EFFECT; TO PROVIDE A GENERAL PENALTY AND FOR CONTINUING VIOLATIONS; TO PROVIDE AN EFFECTIVE DATE, A SAVINGS CLAUSE, AND FOR OTHER PURPOSES

The Mayor and Council (the governing authority) of the City of Varnell, in regular meeting assembled, and after required reading(s) thereof, make the following findings:

WHEREAS, the City of Varnell was originally chartered by the State of Georgia as a municipal corporation by Ga. L. 1968, p. 3065 with referendum approving said Act and thereafter amended from time to time including a new Charter enacted by Ga. L. 1992 p. 6670, and thereafter amended, and has since that time through its fully constituted governing authority enacted numerous law by way of ordinances and resolutions; and

WHEREAS, the City of Varnell has published such local laws and ordinances in singular written fashion without a full codification of its laws and ordinances; and

WHEREAS, the Mayor and Council of the City of Varnell recognize that the State of Georgia requires a Georgia municipality to publish an index or codify its laws and ordinances pursuant to O. C. G. A. § 50-18-99 and the City of Varnell seeks to comply with that requirement; and

WHEREAS, in certain instances existing laws and ordinances will be improved by revisions of clerical or typographical error and more fully adopted to modern conditions; and

WHEREAS, it is in the interest of the public health, safety and welfare to enact and publish for the City of Varnell a Code of Ordinances to state and revise existing law and ordinances and to serve as a platform for the enactment in the future of the laws and ordinances of the City of Varnell;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Varnell and by authority of same IT IS HEREBY ORDAINED as follows:

**THE OFFICIAL CODE OF THE
CITY OF VARNELL, GEORGIA**

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Sec. 1-2. Definitions and rules of construction.

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in the following chapters and sections shall constitute and be designated as "The Code of the City of Varnell, Georgia," and may be so cited.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following rules shall be observed and the following definitions shall apply unless such construction would be inconsistent with the manifest intent of the governing body:

Generally. In the interpretation and application of any provision of this Code, any provisions shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare where any other provision of the Code imposes greater restrictions upon the subject matter than another provision imposed by the Code so that, the provision imposing the greater restriction or regulation shall be deemed to be controlling. The provisions of the Code shall be liberally construed to effect the purposes expressed therein or implied from the expression thereof. Words and phrases shall be construed and understood according to their common and usual meaning unless the contrary is clearly indicated, technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

Charter. The term "Charter" or "City Charter" shall mean the Charter of the City of Varnell, as it now exists or as it may be amended in the future.

City. The terms "the City" or "this City" shall mean the City of Varnell.

Code and this Code. Whenever the term "Code" and "this Code" are referred to without further qualification, it shall mean the Code of the, City of Varnell, Georgia, as designated in section 1-1.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done

shall be counted in computing the time, but the day on which such proceeding is to be had shall not be counted.

Council or City Council. The term “the Council” or “the City Council” shall mean the Mayor and Councilmembers of the City of Varnell, or such lesser number thereof, duly elected and qualified in whom the legislative authority of the City is vested by law.

County. Whenever the term "the County" or "this County" are referred to without further qualification, it shall mean the County of Whitfield in the State of Georgia.

Delegation of authority. Whenever a provision appears requiring the head of a department of the City to do some act or make certain inspections, it is to be construed to authorize the head of the department to designate, delegate and authorize his subordinates to perform the required act or make the required inspection unless the terms of the provision or section specifically require otherwise.

Gender. Words importing one (1) gender include and apply to the other gender as well.

Governing body. The words “governing body” shall mean the Mayor and Councilmembers duly elected and qualified.

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Keeper or proprietor. The terms "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or through a servant, agent or employee.

Corporate boundary. The term "Corporate boundary” shall mean the corporate limits of the City of Varnell as they are set and established from time to time.

Mayor and Council, Council. Whenever the term "Mayor and Council" or "Council" is used, it shall be construed to mean the Mayor and five council members of the City of Varnell, or such lesser

number thereof, duly elected and qualified in whom the legislative authority of the City is vested by law.

Month. The word "month" shall mean a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. A word importing the singular number only may also extend and be applied to several persons and things, and a word importing the plural number only may also extend and be applied to one person or thing, as the use or context may indicate.

Oath. The term "oath" shall be construed to include an affirmation, and the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

O.C.G.A. The term "O.C.G.A." shall mean the Official Code of Georgia Annotated, as amended.

Or, and. The term "or" may be read "and," and the term "and" may be read "or," if the context requires it.

Owner. The term "owner," applied to any property, shall include any part owner, joint owner, member, shareholder, general or limited partner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such property.

Person. The term "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate, as well as to natural persons.

Personal property. The term "personal property" shall include all tangible and intangible property except real property, as defined in this section.

Preceding and following. The terms "preceding" and "following" shall mean next before and next after, respectively.

Premises. Whenever the term "premises" is used it shall mean a place.

Property. The term "property" shall include real and personal property.

Public place. The term "public place" shall mean any place or space open to and/or accessible to the public.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Residence. The term "residence" shall be construed to mean the place adopted by a person as his place of habitation and to which, whenever he is absent, he has the intention of returning.

Seal. The term "seal" shall mean the official seal of the City of Varnell, i.e., the seal of this municipal corporation.

Shall, may. The term "shall" is mandatory; the term "may" is permissive.

Sidewalk. The term "sidewalk" shall mean that portion of a street between the curblines, or the lateral lines of a railway, and the adjacent property lines, intended for use by pedestrians.

Signature and subscription. The terms "signature" and "subscription" of a person shall include a mark when the person cannot write.

State. The term "the State" shall be construed to mean the State of Georgia.

Street, Highway, Roadway, Alley. The term "street" "highway" "roadway," "alley" means the entire width between boundary lines of every publicly maintained right of way when any part thereof is open to the use of the public for purposes of vehicular travel.

Tenant and occupant. The terms "tenant" and "occupant," applied to a building or land, shall include any person holding a written or oral lease or who occupies the whole or a part of such building or land, either alone or with others.

Tenses. Words used in the present tense include the future, when applicable.

Title of officer, employee, department, board, commission, committee or agency. Whenever the title of an officer, employee, department, board, commission, committee or agency is given, it shall be construed as though the phrase "of the City of Varnell" were added.

Week. The term "week" shall be construed to mean seven days, but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one (1) insertion in each week, and all publications heretofore made in accordance with the terms of this subsection are hereby validated.

Written or in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The term "year" shall mean a calendar year.

Sec. 1-3. Section catchlines and other headings.

The headings or captions of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be substantive nor as any part of the section nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. No provision of this Code shall be held invalid because of deficiency in any such catchline or in any heading to any chapter, article or division.

Sec. 1-4 When these rules of construction shall not apply.

The rules of construction set forth in this ordinance shall not be applied to any ordinance which shall contain any express provision excluding such construction, or when the subject matter or context of such ordinance may be repugnant thereto.

Sec. 1-5. Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect nor any suit, prosecution or proceeding pending at the time of the repeal for an offense committed or cause of action arising under the ordinance repealed.

Sec. 1-6. General penalty; continuing violations.

(a) Whenever in this Code or in any City ordinance any act is prohibited or is made or declared to be unlawful or an offense, or whenever in this Code or any City ordinance, the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided, the violation of such provision of this Code or any such ordinance shall be punished by a fine not to exceed \$1,000.00, or imprisonment in the county jail for not more than six months, or work on the public streets or public works for not more than thirty (30) days or by any one or more of these punishments, subject to all limitations contained in the Charter. Each day any continuing violation of this Code or of any ordinance shall continue shall constitute a separate offense.

(b) In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the sections of this Code or any provision of any ordinance shall be deemed a public nuisance and may be abated by the City as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

(c) Unless provided otherwise, all violations of this Code are infractions. The imposition of a municipal infraction by the City's Municipal Court does not prevent license revocation or the imposition of administrative sanctions.

Sec. 1-7. Altering Code.

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of this Code or to insert or delete pages or portions thereof or to alter or tamper with such Code in any manner whatsoever except by ordinance or resolution or other official act of the Mayor and Council which will cause the law of the City to be misrepresented thereby.

Sec. 1-8. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and published for inclusion in this Code. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinance, such repealed portion may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinance as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinance until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the Mayor and Council.

(b) Amendments to any of the sections of this Code may be made by amending such section by specific reference to the section number of this Code in the following language: "That section _____ of the Code of the, City of Varnell, Georgia, is hereby amended to read as follows:" The new provision may then be set out in full as desired.

(c) If a new section not existing in the Code is to be added, the following language may be used: "That the Code of the, City of Varnell, Georgia, is hereby amended by adding a section (or article or chapter) to be numbered _____, which said section reads as follows:"" The new section may then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be.

Sec. 1-9. Supplementation of Code.

(a) By contract or by City personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the Mayor and Council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the Mayor and Council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing sections or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____"

(inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted in the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-10. Severability of parts of Code.

It is declared to be the intention of the Mayor and Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code, or its application to any person or circumstance, shall be declared unconstitutional or otherwise invalid by the final judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code or their application, since they would have been enacted by the Mayor and Council without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Sec. 1-11. Official city time.

Time referred to in this Code and in city ordinances, resolutions, rules and regulations shall mean Eastern Standard Time or Eastern Daylight Saving Time, when applicable, and acts and deeds of commission prohibited after a named hour or before a named hour shall be held and understood to mean such hour by Eastern Time. Wherever any reference to time is made in any of the sections of this Code or in any City ordinances or regulations, such rules, ordinances and regulations are amended to provide that the time provided therein shall be and is made Eastern Time in accordance with law.

Sec. 1-12. Certain ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

(1) Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance promising or guaranteeing the payment of money for the City or authorizing the issuance of any bonds for the City or any evidence of the City's indebtedness or any contract or obligation made by the City;

(3) Any administrative ordinance of the City not in conflict or inconsistent with this Code;

(4) Any ordinance fixing salaries of City officers or employees;

(5) Any budget appropriation ordinance or resolution;

(6) Any right or franchise granted by the Mayor and Council to any person;

(7) Any ordinance dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening, vacating, etc., any street or public way in the City;

(8) Any ordinance establishing and prescribing the street grades of any street in the City;

(9) Any ordinance providing for local improvements or assessing taxes therefor;

(10) Any ordinance dedicating or accepting any plat or subdivision in the City or providing regulations for such;

(11) Any ordinance relating to zoning in the City;

(12) Any ordinance fixing ad valorem taxes or providing for the levying or collecting thereof;

(13) Any ordinance establishing personnel policies and procedures or a retirement plan for the City employees, and amendments thereto;

(14) Any ordinance establishing or providing for participation in an regional planning and development commission or other intergovernmental body;

(15) Any ordinance prescribing traffic regulations for subject matters not included in this Code; or

(16) Any ordinance establishing or imposing any rates, charges or fees for utility services or connections.

(b) All such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

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Chapter 2 ADMINISTRATION

ARTICLE I. MAYOR AND COUNCIL

DIVISION 1. GENERALLY

Sec. 2-1. Legislative body; powers.

The City Council shall constitute the legislative body of the City with the powers of government as provided by the Charter.

Sec. 2-2. Annual appointment of officers and agents.

At the beginning of each year, the City Council may appoint such officers and agents as, in its judgment, shall be necessary and expedient for the proper carrying on of the City's business.

Sec. 2-3. Salaries of appointed officers, employees or agents.

The salaries of all appointed City officers, employees or agents may be fixed by the City Council at the beginning of each year, and at such other times as it may deem proper.

Sec. 2-4. Contempt toward Mayor and Council or Committees.

Contemptuous or disorderly conduct toward the Mayor and Council or any committee thereof or in their presence is prohibited.

Sec. 2-5. Removal of appointed officers.

Unless otherwise provided by written contract between the City and any particular officer or employee of the City or by the express terms of the appointment, all appointed officers, agents, and employees of the City serve at will of the City Council and may be discharged from their office, employment or duties by the City Council for a good and proper reason.

Sec. 2-6. Agenda protocol and procedure.

(a) For each regular meeting of the Mayor and Council, the City Manager shall prepare an agenda as provided in this section of all matters which he knows may be considered at the meeting and described in sufficient detail to explain the nature of the item and the name of the person placing it on the agenda. A copy of this final agenda shall be delivered to each member of the Mayor and Council not later than 5:00 p.m. on the Friday preceding the regular meeting.

(b) No matter shall be placed on the agenda unless the following procedure has been followed:

(1) Only the Mayor, Councilmembers, the heads of city departments and other agencies, boards and commissions, the Municipal Judge, and the City's attorneys may place items on the agenda.

(2) Any request for an item to be placed on the agenda must be received in writing by the City Manager prior to 12:00 noon on Thursday preceding the next regular meeting of the Mayor and Council. Such request shall include a brief affirmative statement of the subject matter of the item, together with a statement of what action the Mayor and Council is being requested to take, and may refer only to one item.

(c) Notwithstanding anything in this Section to the contrary, such agenda shall be timely posted and circulated publicly to comply with the Georgia Open Meetings Law.

DIVISION 2. COMMITTEES

Sec. 2-20. Standing committees.

(a) The Mayor shall appoint persons from the City Council to compose and to serve on each of the following standing committees:

- (1) Recreation.
- (2) Finance.
- (3) Annexation.
- (4) Long Term planning.
- (5) Public Safety.

DIVISION 3. MAYOR

Sec. 2-40. Chief executive.

The Mayor is the chief executive of the City possessing all of the executive and administrative powers granted the City under the laws and Constitution of the State and under the Charter with responsibility for the day to day operations of the City and its departments.

Sec. 2-41. Control of departments.

The Mayor shall have direction of all departments of the City and their heads and employees report to the Mayor, who shall appoint department heads with the advice and consent of the City Council.

Sec. 2-42. Presiding over council; administration of oaths.

The Mayor presides over the meetings of the City Council, at which meetings he shall not vote, except in a tie or in case of a decision on a complaint under Article VIII, when he may cast the deciding vote. He may administer oaths of office to the councilmembers and all other city officers and agents though he may delegate such duty to another qualified individual.

Sec. 2-43. Duties of mayor pro tem.

In the absence or disability of the Mayor, the Mayor Pro Tem shall exercise all of the duties and powers of the Mayor during such absence or disability. He shall preside in the Mayor's absence over City Council meetings retaining his vote on all matters before the Council and being considered a member of the quorum for conduct of Council business.

ARTICLE II. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-60. Liability protection.

(a) This section shall be known as the "Municipal Liability Protection Ordinance" and may be referred to as such in any document or pleading.

(b) The Mayor and Council find as follows:

(1) The elected and appointed officers, supervisors, administrators and employees of Georgia municipalities have increasingly been the target of liability lawsuits for actions arising out of the performance of their duties or in any way connected therewith;

(2) The State has empowered municipalities to purchase liability insurance or contracts of indemnity insuring or indemnifying the members of governing bodies and their supervisors, administrators, employees or other elected or appointed officers of municipalities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law or other statutory rights, whether State, federal or local;

(3) The City may purchase liability insurance covering certain acts of the Mayor and Council, department heads and supervisors, administrators, employees and other elected or appointed public officers;

(4) Liability insurance may not, however, be always available to cover every necessary area of potential liability of the Mayor and Council, department heads and supervisors, administrators, employees and other elected or appointed public officers of the City;

(5) The City needs to retain the services of capable and experienced department heads and supervisors, administrators, employees and other public officers as well as to encourage capable and experienced members of the general public to seek and hold elective office of the City, and the prospect of personal liability unmet by available insurance may be a significant deterring factor to the City's meeting such goal;

(6) The State has provided that a municipality may adopt a policy establishing the terms and conditions under which it will pay part or all of any claim or civil judgment rendered against the Mayor or any Councilmember, department head, supervisor, administrator, employee or other elected or appointed official of the City whom it is authorized to defend pursuant to a written public policy;

(7) It is found to be in the best interest of the City and the good order and administration of the government of the City and its people that the City establish, in addition to any liability insurance or contract of indemnity and secondary thereto only, a policy under which the City will undertake to defend all or specified civil, criminal or quasi-criminal actions brought or maintained against the Mayor and any Councilmember or against any department head, supervisors, administrators, employees or other elected or appointed City officer arising out of the performance of their duties or in any way connected therewith, based upon negligence, violation of contract rights or violation of civil, constitutional, common law or statutory rights and to pay part or all of any claim or civil judgment rendered against any person whose defense the City so undertakes; and

(8) There should be limitations on such duty to provide a legal defense and the obligation to pay part or all of any claim or civil judgment rendered against the Mayor or any Councilmember,

department head, supervisor, administrator, employee or other elected or appointed officer of the City such that the City is not defending or paying claims or judgments with respect to criminal offenses involving theft, embezzlement or other like crimes with respect to the property or money of or in which the City has an interest.

(c) In addition to any contract to defend provided under any liability insurance or contract of indemnity insuring or indemnifying the Mayor or Councilmember, department heads, supervisor, administrator, employee or other elected or appointed officer of the City against personal liability for damages arising out of the performance of their duties or in any way connected therewith and secondary thereto only, it shall be the City's policy to provide as a part of the compensation in terms of employment of the Mayor and Councilmembers, all department heads, supervisors, administrators, employees and other elected or appointed officers of the City a defense for all civil, criminal or quasi-criminal actions brought or maintained against such Mayor, Councilmember, department head, supervisor, administrator, employee and other elected or appointed official, arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law or statutory rights. However, the City shall not be authorized to furnish a defense to any person charged with a criminal offense involving theft, embezzlement or other like crime with respect to property or money of or in which the City has an interest.

(1) The City may expend public funds for such purposes, including, but not limited to attorneys' fees, court costs, deposition costs, witness fees and compensation and all other like litigation and defense costs, expenses and fees.

(2) The City shall designate in its sole discretion appropriate legal counsel to fulfill its policy of providing legal defense under subsection (c)(1) of this section. As a condition of receipt of such legal defense, the Mayor, Councilmember, department head, supervisor, administrator, employee

and other elected or appointed official of the City shall have the duty to cooperate with such legal counsel designated by the City in the defense of the claim or suit. For breach of this duty to cooperate the City's duty to defend and pay any claim shall terminate, without further right or recourse of the person(s) being extended the defense.

(d) In addition to any liability insurance or contract of indemnity covering the Mayor, Councilmember, department heads, supervisors, administrators, employees or other elected or appointed officials of the City, and secondary thereto only, the City shall pay part or all of any claim or civil judgment rendered against any person as provided in this section whose defense the City is authorized to undertake under subsection (c) of this section. As a condition to such payment of any part or all of any claim or civil judgment, such person shall be obligated to cooperate with the attorneys appointed or designated by the City to defend such person in the action. Failure of such employee to cooperate in the defense of the action shall void any obligation of the City to pay part or all of any claim or civil judgment rendered against such person.

(e) This section is intended to set forth a written policy for the City as authorized and provided in O.C.G.A. §§ 45-9-21 and 45-9-22. Nothing in this section shall be construed as waiving any immunity or privilege of any kind enjoyed by the City or other public body, department, board, commission or agency of the City or by the Mayor and any Councilmember or by any department head, supervisor, administrator, employee or other elected or appointed officer of the City or any public body, board, department, agency or political subdivision of the city.

DIVISION 2. CITY ADMINISTRATOR

Sec. 2-80 Appointment and general responsibilities.

The City Manager shall be appointed by the Mayor with the advice and consent of the City Council. His duties shall include those prescribed for the City Treasurer under the Charter in addition to such others as prescribed by the Mayor and Council. In all cases where the duty is not

expressly charged to any other department or officer, it shall be the duty of the City Manager to act to promote, secure, and protect the financial and property interests of the City, subject to the supervision and control of the Mayor.

Sec. 2-81 General supervision.

Subject to the supervisor and control of the Mayor, the City Manager shall exercise general supervision over all officers and the heads of departments of the City regarding the proper management of the fiscal concerns of their respective offices and departments. He shall establish and keep controlling accounts with every department, office, board, commission, agency, and bureau of the City, including coordination with accounts of the Municipal Court, and with all activities whatever owned or controlled by the City or in which the City has any property interest.

Sec. 2-82 Payments and financial reports.

(a) The City Manager in coordination with the City Clerk shall see that officers, departments, boards, agencies, commissions, and bureaus of the City, including the Municipal Court, receiving money pay the same into the City's proper account(s), when thereto required, and that all necessary financial reports are made, and shall report all delinquencies in such payments to the Mayor and the City Council.

(b) The City Manager in conjunction with the City Clerk shall see that accounts of receipts and expenditures are kept in proper books, and that a full and accurate account of all moneys received and disbursed by the City be maintained, specifying the time of receipt and disbursement, from whom received and to whom disbursed, and on what account received and disbursed, and how paid.

Sec. 2-83 Budget duties.

The City Manager shall prepare estimates of revenue, and shall give such other assistance in the preparation of the budget as may be required of him by the Mayor and the City Council. He

shall maintain statement(s) of cash on hand and of classified unencumbered appropriation balances for the City as a whole, and such other financial statements as the Mayor or City Council may from time to time require. Likewise he shall keep the departments, offices, boards, commissions, agencies, and bureaus informed of its classified unencumbered appropriation balances.

Sec. 2-84 Coordinate departments.

The City Manager shall be responsible for coordination of the administrative heads of each department of the City and for the review and analysis of the operation and administration of all departments, offices, boards, commissions, agencies, and bureaus, except for the Municipal Court.

Sec. 2-85 Appear before the City Council.

The City Manager shall have the power to appear before and address the Mayor and Council at any meeting with the right to take part in the discussion. He shall make recommendation to the Mayor and the City Council and deliver messages to the City Council and the people.

DIVISION 3. CITY CLERK

Sec. 2-100. Location of office.

The City Clerk shall have and maintain an office in the council chamber or as near thereto as practicable.

Sec. 2-101. Office hours.

The City Clerk shall keep her office open from 9:00 a.m. to 5:00 p.m. on Monday through Friday, except for holidays and inclement weather events.

Sec. 2-102. General duties.

The City Clerk shall attend all meetings of the City Council and shall keep a correct record of the proceedings; shall issue licenses, summonses, processes, subpoenas and executions as and if required by law; shall have the custody of all records, papers and books and the seal belonging to the

governing authority; and shall pay all moneys received by her to the City depository at least once a week. She shall perform such other duties as may be required of her by the Mayor and Council.

Sec. 2-103. Books to be kept.

The City Clerk shall keep a book or journal of neat and accurate minutes of the proceedings of the City Council, books of ordinances, record and keep a permanent record of all licenses in accordance with the records retention policy, and keep and maintain the tax digest and tax records.

Sec. 2-104. Publish Council action.

The City Clerk shall publish in a timely and lawful manner all adopted ordinances and resolutions of the Council, and all legal notices required by law or ordinance.

Sec. 2-105 Maintain City seal.

The City Clerk shall have custody of the seal of the City and affix it to such documents as may be required and authorized pursuant to law.

Sec. 2-106 Serve meeting notices.

The City Clerk shall cause all notices of regular and special meetings of the City Council to be served or published in accordance with State statutes, Charter provisions, City ordinances and the rules of the Council, if any, and as may be directed by the Mayor.

Sec. 2-107 Keep demographic records.

The City Clerk shall be the repository for all records of census, corporate boundaries, annexations, records of property title and ownership of the City, contracts, zoning decisions and actions, and for the various commissions, agencies, and boards, except for the Municipal Court.

ARTICLE IV. BOARDS, COMMISSIONS AND AUTHORITIES

Sec. 2-120. Reserved.

Secs. 2-121--2-139. Reserved.

ARTICLE V. FINANCE

Sec. 2-140. Designation of County tax commissioner to prepare tax digest, assess and collect taxes.

Pursuant to applicable State law, the Mayor and Council may by contract, designate the County tax commissioner to prepare the tax digest for the City; to assess and to collect municipal taxes in the same manner as County taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes.

Secs. 2-141--2-159. Reserved.

ARTICLE VI. SMOKING IN CITY-OWNED OR CITY-LEASED PROPERTY

Sec. 2-160. Findings of fact.

The Mayor and Council find that it is in the best interest of the health, welfare and safety of the City and its citizens to:

- (1) Provide a healthy, comfortable and productive working environment for its employees in the City's public buildings and facilities serving the public as well as motor vehicles;
- (2) Protect nonsmokers;
- (3) Help employees adjust to restrictions on smoking; and
- (4) Prohibit smoking of cigarettes and other tobacco products in any City-owned or City-leased enclosed building space as well as a motor vehicle occupied by at least one nonsmoker.

Sec. 2-161. Smoking prohibited in buildings and in motor vehicles occupied by nonsmoker.

Smoking of cigarettes or other tobacco products by whatever name known or called is prohibited in any enclosed building space as well as in any motor vehicle occupied by at least one nonsmoker owned or leased by the City and any of its departments, agencies, boards, authorities and commissions. For purposes of this section, the term "nonsmoker" shall mean any individual who declares that he does not smoke cigarettes or other tobacco products or has discontinued the smoking of cigarettes or other tobacco products.

Sec. 2-162. Conflict with other regulations.

Section 2-161 will not conflict with any existing or future regulation established for fire, health or safety reasons.

Sec. 2-163. Promulgation, dissemination and implementation of findings.

The City Manager is authorized and directed to promulgate and disseminate to all City employees the findings contained in this article and to provide for its implementation as follows:

(1) All departments, agencies, authorities, boards, commissions and elected officers will give this article wide dissemination to all employees;

(2) All prospective new City employees will be informed of the no smoking policy in this article before they are hired;

(3) Smoking cessation classes will be provided to all City employees through the County health department, provided the classes are made available from time to time; and

(4) Signs will be placed in all appropriate spaces and City buildings indicating that smoking is not allowed. Such signs shall be uniform in language and color.

Sec. 2-164. Responsibility of employees.

All City employees share in the responsibility for adhering to and enforcing the policy in this article.

Sec. 2-165. Violations; penalties.

(a) Any violation of section 2-161 or conflict concerning its implementation shall be brought to the attention of appropriate supervisory personnel. In all cases the right of a nonsmoker to protect his health and comfort will take precedence over an employee's or nonemployee's desire to smoke.

(b) Violations of this article by an employee may be subject to appropriate disciplinary action under the provisions of the City personnel policies.

(c) Any nonemployee of the City who continues to violate section 2-161 after receiving an oral request to cease smoking of the cigarette or tobacco material from authorized personnel with offices located in the enclosed building or having responsibility for the motor vehicle shall be subject to citation to the Municipal Court of the City and, upon adjudication of guilt, may be fined not less than \$25.00 and not more than \$600.00 per violation. The City Manager in implementing this article shall designate authorized personnel to make such oral requests as provided in this subsection.

Secs. 2-166--2-170. Reserved.

ARTICLE VII. RECORDS RETENTION

Sec. 2-180. Retention schedules for local government records.

"Retention Schedules for Local Government Paper and Electronic Records", as promulgated by the Archives, Records and Information Management Section, Georgia Secretary of State, revised May 2007, as from time to time amended, are hereby adopted and incorporated by reference as the minimum retention schedules for public records of the City. For purposes of this section, the definition of "records" found at O.C.G.A. § 50-18-91(5) is hereby incorporated by reference. Municipal Court records shall be maintained in accordance with those standards promulgated, from time to time, by the Georgia Administrative Office of Courts. Records pertaining to investigations of the police department shall be maintained in accordance with the policies of the Varnell Police Department which must be in writing and on file with the City Clerk.

Notwithstanding an applicable records retention schedule to the contrary, records relevant to an actual or potential investigation not initiated by the City police department, administrative proceeding, or lawsuit, shall be preserved until the City Attorney or other legal representative of the City determines the records are no longer needed. This exception supersedes any previously or subsequently established retention schedule for those records.

Sec. 2-181. Compliance.

The City Manager and each department head of the City will be responsible for overseeing implementation, maintenance, security and compliance with record retention requirements. The responsibility imposed by this section includes training and education of employees in the creation, storage, indexing or archiving of public records, records management and retention, compliance with open records laws, and the production and disclosure of records in litigation.

Sec. 2-182. Records management officer.

The City Clerk is hereby appointed and designated as the records management officer for the City. It shall be the duty of the records management officer to promulgate policies and procedures governing public records management. Such policies and procedures shall include electronically stored information in addition to records created or maintained in tangible format. The records management officer may designate, in writing, such assistant or deputy officers as required to perform the duties of the office.

Sec. 2-183. Title vested in City.

Title to any public record created or required to be filed or recorded with the City or any department or agency thereof shall be vested in the City and no individual officer or employee shall acquire any property rights therein. Any records designated as "confidential" or "privileged" by law shall be so treated in their creation, maintenance, storage, dissemination, and disposal. Access to such records shall be restricted in the manner provided by law and disclosure thereof shall be made available only to authorized individuals.

Sec. 2-184. Destruction of records.

The destruction of public records shall occur only through the application of the appropriate retention schedule and after satisfying any administrative approvals necessary to authorize destruction. Alienation, alteration, theft or unauthorized destruction of public records of the City by

any person or persons in a manner not authorized by an applicable records management program or retention schedule is prohibited, and may result in such person's criminal prosecution and/or removal from public office or dismissal from public employment.

Secs. 2-185--2-199. Reserved.

ARTICLE VIII. ETHICS

Sec. 2-200. Findings of fact.

The Mayor and Council make the following findings of fact:

(a) It necessary to the proper operation of democratic government that public officials be, and appear to be, independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper manner and structure; and that public office not be used for personal gain; and

(b) Affirmative measures to this end are necessary to provide the public with confidence in the integrity of its government,

(c) It is the policy of the City that its officials, employees, appointees, and volunteers conducting official city business be governed by the principles set forth by the specific provisions of this article.

Sec. 2-201. Purpose.

Declaration of policy. It is the policy of the City that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a Code of Ethics for all city officials is hereby adopted.

This Code has the following purposes: (1) to encourage high ethical standards in official conduct by City officials; (2) to establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interest of the City; (3) to require disclosure by such officials of private financial or other interest in manners that affect the City; and (4) to serve as a basis for disciplining those who refuse to abide by its terms. Pursuant to controlling State and federal law, the provisions of this Article shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns or the conduct of candidates in such campaigns.

Sec. 2-202. Scope.

Scope of persons covered. The provisions of this Code of Ethics shall be applicable to all elected or appointed members of the City government, the City Attorney, and the Municipal Court Judges. Notwithstanding anything herein to the contrary, the Charter of the City shall be controlling in all matters pertaining to the unlawful interest of all elected or appointed members of the City government, the City Attorney, and the Municipal Court Judges or officers in contracts or other matters governed by the Charter. This Ordinance shall be interpreted to supplement, and not replace, said provisions of the Charter.

Sec. 2-203. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

City official or official, unless other expressly defined, means the Mayor, City Council members, Municipal Court Judges (including substitute judges), City Attorney, whether such person is salaried, hired or elected.

Decision means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the City Council, as well as the discussions or deliberations of the City Council which can or may lead to a vote or formal action by that body.

Discretionary authority means the power to exercise any judgment in a decision or action.

Entity means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Immediate family means spouse, mother, father, brother, sister, son, or daughter of any City official.

Incidental interest means an interest in a person, entity or property which is not a substantial interest and which has insignificant value.

Remote interest means an interest of a person or entity, including a City official, who would be affected in the same way as the general public. The interest of a Council member in the property tax rate, general City fees, or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the Council member would be affected in common with the general public.

Substantial interest means a known interest, either directly or through a member of the immediate family, another person or entity where: (1) the interest is ownership of ten percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or (2) funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000.00 in salary, bonuses, commissions or professional fees or \$5,000.00 in payment for goods, products or nonprofessional services, or ten percent of the recipient's gross income during that period, whichever is less; (3) the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the City; or (4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount

of \$5,000.00 or more. Substantial interest in real property means an interest in real property which is an equitable or legal ownership with a market value of \$5,000.00 or more.

Sec. 2-204. Standards of Conduct.

(a) No City official shall use his position to secure special privileges or exemptions for him or herself or others, or to secure confidential information for any purpose other than official responsibilities.

(b) No City official, in any matter before the City Council, in which he has a substantial interest, shall fail to disclose for the common good for the record such interest prior to any discussion or vote.

(c) No City official shall act as an agent or attorney for another in any matter before the City Council.

(d) No City official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law for political campaigns and contributions. Furthermore, no City official shall accept any gift or reward in excess of \$50.00 from any person having business before or with the City.

(e) No City official shall enter into any contract with, or have any interest in, either directly or indirectly, the City except as specifically authorized by State statutes. This prohibition shall not be applicable to the professional activities of the part-time City Attorney in his or her periodic work on behalf of the City.

(f) All public funds shall be used for the general welfare of the people and not for personal economic gain.

(g) Public property shall be disposed of in accordance with Georgia law.

(h) No City official shall solicit or accept other employment to be performed or compensation to be received while still a City official, if the employment or compensation could reasonably be expected to impair judgment or performance of City duties.

(i) If a City official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the City Council, or, in the case of the City Attorney or Municipal Court Judge, to the City Manager, and shall take no further action on matters regarding the potential future employer.

(j) No City official shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.

(k) No City official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.

Sec. 2-205. Conflict of Interest

Prohibition of conflict of interest. A City official may not participate in a vote or decision on a matter affecting a person, entity, or property in which the official has a substantial interest. In addition, City officials who serve as corporate officers or members of the board of directors of a nonprofit entity must disclose their interest in said entity prior to participating in a vote or decision regarding funding by or through the City of the entity. Where the interest of a City official in the subject matter of a vote or decision is remote or incidental, the City official may participate in the vote or decision and need not disclose the interest.

Sec. 2-206. Exemptions

Exemptions. This Code shall not be construed to require the filing of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil or political organization, or any similar organization not conducted as a business enterprise or governmental agency, and which is not engaged in the ownership or conduct of a business enterprise or governmental agency.

Sec. 2-207. Investigative Procedure

Duties and powers. The City Council shall have the following duties and powers:

(1) To establish procedures, rules and regulations governing its internal organization and conduct of its affairs, provided however, that any finding of the City Council shall be made on a positive vote of at least three of the remaining members of the City Council and Mayor (or Mayor Pro Tempore);

(2) To hold a hearing within 60 days after the receipt of complaint. Failure to hold a hearing within the specified time shall result in dismissal of the complaint as to the transaction and shall prevent refileing if a complaint arises in the same incident for at least a period of three months;

(3) To receive and hear complaints of violations of the standards required by this Article;

(4) To deliver to the accused party written notice of the allegations at least ten business days before a hearing. Service may be by personal service or by certified mail, return receipt requested;

(5) To make such investigation and response to a complaint as it deems necessary to determine whether any person has violated any provisions of this Article;

(6) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints; and

(7) To report its findings along with proposed sanction.

Sec. 2-208. Enforcement Procedure

Enforcement. Any person having a complaint against any City official for an alleged ethics violation under this article shall file in writing a verified complaint setting forth the particular facts and circumstances which constitute the alleged violation. The complaint shall be filed with the Mayor through the City Clerk's office, or in the event the complaint regards the Mayor, shall be filed with the Mayor Pro Tempore through the City Clerk's office. Upon receipt of a complaint, the Mayor, or in the event the complaint regards the Mayor, the Mayor Pro Tempore, shall notify the accused official of the complaint. The accused official shall provide a written response to the Mayor concerning the allegation within three (3) business days. The Mayor (or Mayor Pro Tempore) shall appoint two members of the City Council to serve as an investigating committee. The Mayor (or Mayor Pro Tempore) shall also serve as a member of the investigative committee. The committee may be assisted by the City Attorney. The committee shall determine whether the complaint sets forth significant facts and circumstances so as to warrant a hearing before the full City Council.

In the event investigating committee determines that the complaint does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded, it shall be dismissed and the complainant and accused official notified immediately. In the event the complaint is found to state sufficient facts to warrant a hearing before the City Council, the Mayor shall schedule a hearing into the complaint. The City Council shall call any witness or request any evidence it deems necessary to consider the complaint. Three of the remaining four City Council members must be present in order for the hearing to be held. The accused official shall have the right at such hearing to present evidence or call witnesses, and the accused official shall have the right to be represented by an attorney.

Although held to the same standards of conduct as the City Council, any ethics complaint against the Municipal Court Judges or the City Attorney shall be investigated, and the provisions of this article enforced by the City Manager.

Sec.2-209. Penalties

- (a) Penalties. Any persons violating any provisions of this policy are subject to:
- (1) Written and oral reprimand by the Mayor and City Council.
 - (2) Request for resignation by the Mayor and City Council.
 - (3) Removal by the Mayor and City Council (pursuant to the Charter).

Sec.2-210. Due Process

Findings of violations of this Ordinance are appealable by the affected City official to the Superior Court of Whitfield County.

Sec.2-211. Severability

Severability. The provisions of this article are severable. If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provisions or application.

Chapter 3. STREET LIGHTS

Sec. 3-1. Findings.

Sec. 3-2. Street lighting and City's assumption of electrical charges for strategic area(s).

Sec. 3-3. Develop creating property owner's association and designer street lighting.

Sec. 3-4. Uniformly.

Sec. 3-5. Dedication of rights-of-way and lighting apparatus.

Chapter 3. STREET LIGHTS

Sec. 3-1 Findings.

The Mayor and Council find it to be in the interest of the health, safety and welfare of the City of Varnell to require street lighting in major residential subdivisions now existing or to be developed in the City of Varnell.

Sec. 3-2 Street lighting and City's assumption of electrical charges for strategic area(s).

For that reason all residential subdivisions of five (5) or more lots to be developed and constructed from and after the effective date of this Ordinance shall install street lighting meeting the height specifications of the primary or secondary electrical utility supplier serving the property. The subdivision developer may petition the City of Varnell to pay for the monthly street light service for strategic area(s) of the subdivision which means intersection(s), cul-de-sac(s) and entrance(s) to the subdivision. At the time of petition the developer must provide the lighting plan to the Mayor and City Council for approval as a condition precedent to the City assuming payment for the electrical service to the strategic area(s) lighting.

Sec. 3-3 Develop creating property owner's association and designer street lighting.

A developer creating a private property owner's association may install designer street lighting, but only if the lighting meets the height specifications of the primary or secondary electrical utility supplier.

Sec. 3-4 Existing subdivisions.

In existing residential subdivisions within the City of Varnell of five (5) or more lots where no street lighting exists or inadequate lighting is available, the City of Varnell shall be authorized upon request of the homeowner's association, as in Section 3-2 to approve a lighting design plan where the City will assure the costs of electrical utility charges for the lighting to include intersection(s), cul-de-sac(s), and entrance(s) to the subdivision. In no event will the City be

required to implement this program in any existing subdivision should the requirements of Section 3-2 not be followed along with the requirement of the existence of an active and enforceable property owner's association.

Sec. 3-4 Uniformly.

If the City of Varnell provides street light service to new developments or existing developments as described in this Chapter 3 the City will apply this program uniformly on a citywide basis based on City Council approval of the lighting plan(s) and other requirements stated.

Sec. 3-5 Dedication of rights-of-way and lighting apparatus.

In no event will the City of Varnell be obligated to assume the electrical charges or maintenance, repair, or cost of moving or removal of any street light erected pursuant to this Ordinance until same has been dedicated along with street right-of-way in writing to the City and accepted by Resolution of the Mayor and Council.

Chapter 4. COURT TIMES

Sec. 4-1. Sessions of Court.

Chapter 4 COURT TIMES

Sec. 4-1 Sessions of Court.

Pursuant to Section 5.12 of the Charter of the City of Varnell, the Mayor and Council hereby set the sessions for the Municipal Court on the first, second, and third Mondays of each calendar month beginning at 6:00 o'clock p.m. Eastern Time.

The Chief Judge of the Municipal Court may, in his discretion, set a court date for the fourth Monday of the calendar month at 6:00 o'clock p. m. Eastern Time if the Chief Judge deems it necessary based on the caseload considerations of the previous three (3) months period and in the interest of the proper functioning of the Municipal Court.

Chapter 5 HOUSEHOLD GARBAGE AND LITTER CONTROL

Sec. 5-1. Definitions.

Sec. 5-2 Prohibition; penalty for violation.

Chapter 5 HOUSEHOLD GARBAGE AND LITTER CONTROL

Sec. 5-1 Definitions.

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

Household garbage means animal, vegetable, and fruit refuse matter and other refuse matter ordinarily generated as by-products of a household or restaurant, such as tin cans, bottles, paper, cardboard, plastics, and wrapping or packaging materials.

Litter means all discarded sand, gravel, slag, brickbats, rubbish, waste material, tin cans, refuse, garbage, trash, debris, dead animals, any glass bottle, jar or other container or any other glass, any cans or paper or plastic container, or any other rubbish, refuse or substance or other discarded materials of every kind and description including but not limited to biomedical waste, egregious litter, hazardous substances, and hazardous wastes as such term is defined in O.C.G.A. § 16-7-51(6).

Public or private property means the right-of-way of any road or highway; any body of water or its shores, any park, playground, building, refuge, or conservation or recreation area; and residential properties.

Sec. 5-2 Prohibition; penalty for violation.

(a) It shall be unlawful to throw or deposit household garbage or litter upon any street, street right-of-way, sidewalk or other public place within the City.

(b) It shall be unlawful for any person or persons to dump, deposit, throw, leave, cause, or permit the dumping, depositing, placing, throwing, or leaving of litter or household garbage on any public or private property in the City, other than in a properly sealed or closed disposal container for purposes of holding such material.

(c) It shall be unlawful for any person or entity to scatter, throw, place, sweep, or deposit anywhere within the City any litter in such a manner that it may be carried by wind, rain, water, or

animals upon any public or private property. Where commercial or public litter receptacles are not available, all such litter shall be carried away by the person responsible for its presence and properly disposed of elsewhere and in appropriate container.

(d) It shall be unlawful for any person or entity to trespass on the property rights, peace or repose of another through the neglect of property by causing or allowing unsightly litter, junk, weeds and grass, yard waste, foul odor, dead animals, household garbage, unsecured appliances or equipment, or potentially dangerous devices to remain on or emanate from property, or to discard or abandon or cause such on public property, private property, vacant lot or any pond, stream, or body of water or bank thereof within the City limits.

(e) Commercial sites with on-site parking shall, at a minimum, have its parking area cleaned or swept as needed to prevent an accumulation of litter and to maintain a neat and orderly appearance free of inherently dangerous items, equipment, or merchandise left in an open area or on tables around the business. Violation is deemed to be dangerous to the wellbeing and safety of the citizens of the City.

(f) Any person convicted of a violation of any portion of this Chapter shall be punished by a fine not exceeding \$500.00, or be required to work by removing litter, cutting grass or participating in other beautification projects as sentenced by the Municipal Court, on the public streets or highway or public rights-of-way, and public property in the City not exceeding 30 days or any combination of both in the discretion of the Judge of the Municipal Court. In the sound discretion of the Judge of the Municipal Court, the person may be directed to pick up and remove from any public park, private rights-of-way, or, with the prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it can be established by competent evidence that the person has deposited litter, any and all litter deposited thereon.

Chapter 6. TACKING SIGNS ON PUBLIC RIGHTS-OF-WAY

Chapter 6. TACKING SIGNS ON PUBLIC RIGHTS-OF-WAY

It shall be unlawful for any person to attach, tack or nail any sign, poster, notice, advertisement or other similar article or thing to any utility pole, telephone or telegraph pole, tower, appurtenance for the transmission of electric current or telephonic communication, traffic control sign or street sign at any place to include a free-standing sign on the ground within the corporate limits. Notwithstanding the foregoing, in the interest of safety, any official or employee of the City, County, State, or utility company to which the sign is attached shall have the authority to remove and dispose of any sign placed within the public right-of-way without notice to the owner. Nothing, however, shall prevent any person to place signs on their private property or the private property of another with the permission of the owner provided same is otherwise compliance with municipal, State, and federal laws.

Chapter 7. SOIL EROSION AND SEDIMENTATION

Sec. 7-1. Title.

Sec. 7-2. Definitions.

Sec. 7-3. Exemptions.

Sec. 7-4. Minimum requirements for erosion and sedimentation control using best management practices.

Sec. 7-5. Application/permit process.

Sec. 7-6. Inspection and enforcement.

Sec. 7-7. Penalties and incentives.

Sec. 7-8. Education and certification.

Sec. 7-9. Administrative appeal/judicial review.

Sec. 7-10. Effectivity, validity, and liability.

Sec. 7-1. Title.

This portion of the code shall be known as the "City of Varnell Soil Erosion and Sedimentation Controll."

Sec. 7-2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance, unless otherwise specifically stated:

Best management practices (BMP's) : A collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control. The term "properly designed" means designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. § 12-7-6(b).

Board : The Board of Natural Resources.

Buffer : The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

Commission : The state Soil and Water Conservation Commission.

Cut : A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface. Also known as "excavation".

Department : The Department of Natural Resources.

Director : The Director of the Environmental Protection Division of the Department of Natural Resources.

District : The Limestone Valley Soil and Water Conservation District.

Division : The Environmental Protection Division of the Department of Natural Resources.

Drainage structure : A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for stormwater management, drainage control, or flood control purposes.

Erosion : The process by which land surface is worn away by the action of wind, water, ice or gravity.

Erosion and sedimentation control plan : A plan for the control of soil erosion and sedimentation resulting from a land-disturbing activity. Also known as the "plan."

Fill : A portion of land surface to which soil or other solid material has been added; the depth above the original ground.

Finished grade : The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

Grading : Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

Ground elevation : The original elevation of the ground surface prior to cutting or filling.

Land-disturbing activity : Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in paragraph (5) of O.C.G.A. Section 12-7-17.

Larger common plan of development or sale : A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the

purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design, or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

Local issuing authority : The governing authority of any county or municipality which is certified pursuant to O.C.G.A. § 12-7-8(a).

Metropolitan River Protection Act (MRPA) : A state law referenced as O.C.G.A. § 12-5-440 et seq., which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

Natural ground surface : The ground surface in its original state before any grading, excavation or filling.

Nephelometric turbidity units (NTU) : Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.

Operator : The party or parties that have:

- (1) Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- (2) Day-to-day operational control of those activities that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan to comply with other permit conditions.

Permit : The authorization necessary to conduct a land-disturbing activity under the provisions of this article.

Person : Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this state, any interstate body or any other legal entity.

Project : The entire proposed development project regardless of the size of the area of land to be disturbed.

Qualified personnel : Any person who meets or exceeds the education and training requirements of O.C.G.A. § 12-7-19.

Roadway drainage structure : A device, such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Sediment : Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.

Sedimentation : The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

Soil and water conservation district approved plan : An erosion and sedimentation control plan approved in writing by the Limestone Valley Soil and Water Conservation District.

Stabilization : The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

State general permit : The national pollution discharge elimination system general permit or permits for stormwater runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., and O.C.G.A. § 12-5-30(f).

State waters : Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

Structural erosion and sedimentation control practices : Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the publication Manual for Erosion and Sediment Control in Georgia.

Trout streams : All streams or portions of streams within the watershed as designated by the game and fish division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Vegetative erosion and sedimentation control measures : Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- (1) Permanent seeding, sprigging or planting, producing long-term vegetative cover; or
- (2) Temporary seeding, producing short-term vegetative cover; or
- (3) Sodding, covering areas with a turf of perennial sod-forming grass. Such measures can be found in the publication Manual for Erosion and Sediment Control in Georgia.

Watercourse : Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Wetlands : Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 7-3. Exemptions.

This article shall apply to any land-disturbing activity undertaken by any person on any land except for the following:

- (1) Surface mining, as the same is defined in O.C.G.A. § 12-4-72, Mineral Resources and Caves Act;
- (2) Granite quarrying and land clearing for such quarrying;
- (3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, and other related activities which result in minor soil erosion;

(4) The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection (b) of O.C.G.A. Section 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of O.C.G.A. Section 12-7-6 and the buffer zones provided by this section shall be enforced by the issuing authority;

(5) Agricultural operations as defined in O.C.G.A. § 1-3-3 to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;

(6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of subsection (b) of O.C.G.A. 12-7-6 no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;

(7) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(8) Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the local issuing authority from regulating any such project which is not specifically exempted by paragraphs (1), (2), (3), (4), (5), (6), (7), (9) or (10) of this subsection;

(9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, the Georgia Regional Transportation Authority (GRTA) or the state tollway authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of Department of Transportation or state tollway authority

which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1 except where the Department of Transportation, the Georgia Highway Authority, or the state road and tollway authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the local issuing authority, the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

(10) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system, as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permits holders; and

(11) Any public water system reservoir.

Sec. 7-4. Minimum requirements for erosion and sedimentation control using best management practices.

(a) *General provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not excluded by this Ordinance shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the minimum requirements of subsections (b) and (c). The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sedimentation pollution during all stages of any land-disturbing activity.

(b) *Minimum requirements/BMP's.*

(1) Best management practices as set forth in this subsection and subsection (c) of this section shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the local issuing authority or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act. As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the Manual for Erosion and Sediment Control in Georgia specified in O.C.G.A. § 12-7-6(b).

(2) A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any

land-disturbing permit issued by a local issuing authority or of any state general permit issued by the Division pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act, for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

(3) Failure properly to design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the Division pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act, for each day on which such failure occurs.

(4) The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

(c) The rules and regulations, ordinances, or resolutions adopted pursuant to this Ordinance for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

(1) Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;

(2) Cut-fill operations must be kept to a minimum;

(3) Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;

(4) Whenever feasible, natural vegetation shall be retained, protected and supplemented;

(5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;

(6) Disturbed soil shall be stabilized as quickly as practicable;

(7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;

(8) Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;

(9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1, et seq.

(10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;

(11) Cuts and fills may not endanger adjoining property;

(12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

(13) Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;

(14) Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (b)(2) of this section;

(15) Except as provided in paragraph (16) of this subsection, there is established a 25-foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; provided, however, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the Georgia Water Quality Control Act, shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:

a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) stream crossings for water lines; or (ii) stream crossings for sewer lines; and

(16) There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the Georgia Water Quality Control Act, except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:

a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a

buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) stream crossings for water lines; or (ii) stream crossings for sewer lines; and

(d) Nothing contained in this Ordinance shall prevent the local issuing authority from hereafter adopting rules and regulations, Ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in subsections (b) and (c) of this section.

(e) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Ordinance or the terms of the permit.

Sec. 7-5. Application/permit process.

(a) *General.* The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the local issuing authority that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this Ordinance, and other ordinances which regulate the development of land within the jurisdictional boundaries of the local issuing authority. However, the operator is the only party who may obtain a permit.

(b) *Application requirements.*

(1) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Varnell without first obtaining a permit from the City or its delegated official to perform such activity.

(2) The application for a permit shall be submitted to the City through its delegated official and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in subsection (c) of this section. Soil erosion and sedimentation control plans shall conform to the provisions of O.C.G.A. section 12-7-6 and subsection (c) of this Ordinance. Applications for a permit will not be accepted unless accompanied by three copies of the applicant's soil erosion and sedimentation control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to the creation of the plan or that such a visit was not required in accordance with rules and regulations established by the Board.

(3) Fees will be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. The City of Varnell and its delegated official shall comply with this division of fees as may be applicable. In a jurisdiction that is certified pursuant to O.C.G.A. § 12-7-8(a), half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to O.C.G.A. § 12-9-17 shall be submitted in full to the Division, regardless of the existence of a local issuing authority in the jurisdiction. A copy of the notice of intent submitted to the State of Georgia shall also be submitted to the local issuing authority. Secondary permittees shall provide to the City of Varnell or its delegated official a copy of any such notice of intent submitted to the State of Georgia when applying for a building permit.

(4) Immediately upon receipt of an application and plan for a permit, the issuing authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. A District shall approve or disapprove a plan within 35 days of receipt. Failure of a District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the local issuing authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Chapter 7 of Title 12 of the Official Code of Georgia and implementing regulations and bonding, if required, have been obtained. Such review will not be required if the issuing authority and the District have entered into an agreement which allows the issuing authority to conduct such review and approval of the plan without referring the application and plan to the District.

(5) If a permit applicant has had two or more violations of previous permits, this Ordinance, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the local issuing authority may deny the permit application.

(6) The local issuing authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this Ordinance or with the conditions of the permit after issuance, the local issuing authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the local issuing authority with respect to alleged permit violations.

(c) *Plan requirements.*

(1) Plans must be prepared to meet the minimum requirements as contained in Chapter 7 of Title 12 of the Official Code of Georgia and its implementing regulations. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the Manual for Erosion and Sediment Control in Georgia, published by the state Soil and Water Conservation Commission as a guide; or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this Ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, local ordinances and state laws.

(2) *Data required for site plan.*

a. Narrative or notes, and other information. Notes or narrative to be located on the site plan in general notes or in erosion and sediment control notes.

b. Description of existing land use at project site and description of proposed project.

c. Name, address, and phone number of the property owner.

d. Name and phone number of 24-hour local contact who is responsible for erosion and sedimentation controls.

e. Size of project, or phase under construction, in acres.

f. Activity schedule showing anticipated starting and completion dates for the project. Include the statement in bold letters, that "the installation of erosion and sedimentation control measures and practices shall occur prior to or concurrent with land-disturbing activities."

g. Stormwater and sedimentation management systems-storage capacity, hydrologic study, and calculations, including off-site drainage areas.

h. Vegetative plan for all temporary and permanent vegetative measures, including species, planting dates, and seeding, fertilizer, lime, and mulching rates. The vegetative plan should show options for year-round seeding.

i. Detail drawings for all structural practices. Specifications may follow guidelines set forth in the Manual for Erosion and Sediment Control in Georgia.

j. Maintenance statement. "Erosion and sedimentation control measures will be maintained at all times. If full implementation of the approved plan does not provide for effective erosion control and sediment control, additional erosion and sediment control measures shall be implemented to control or treat the sediment source."

(3) Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control. All persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training requirements as developed by the Commission pursuant to O.C.G.A. § 12-7-20. The certified plans shall contain:

- a. Graphic scale and north point or arrow indicating magnetic north.
- b. Vicinity maps showing location of project and existing streets.
- c. Boundary line survey.
- d. Delineation of disturbed areas within project boundary.
- e. Existing and planned contours, with an interval in accordance with the following:

TABLE INSET:

Map Scale	Ground Slope	Contour Interval (feet)
1 inch = 100 feet or larger scale	Flat 0--2%	0.5 or 1
	Rolling: 2--8%	1 or 2
	Steep: 8%+	2, 5 or 10

f. Adjacent areas and features areas such as streams, lakes, residential areas, etc. which might be affected should be indicated on the plan.

g. Proposed structures or additions to existing structures and paved areas.

h. Delineate the 25-foot horizontal buffer adjacent to state waters and the specified width in MRPA areas.

i. Delineate the specified horizontal buffer along designated trout streams, where applicable.

j. Location of erosion and sedimentation control measures and practices using coding symbols from the Manual for Erosion and Sediment Control in Georgia, Chapter 6.

(4) Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the property owner.

(d) *Permits.*

(1) Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the local issuing authority or its delegated official of a completed application, providing variances and bonding are obtained, where necessary.

(2) No permit shall be issued by the local issuing authority unless the erosion and sedimentation control plan has been approved by the district and the local issuing authority has affirmatively

determined that the plan is in compliance with this ordinance, any variances required by Chapter 7 of Title 12 of the Official Code of Georgia and its implementing regulations are obtained, bonding requirements, if necessary, are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the local issuing authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

(3) If the tract is to be developed in phases, then a separate permit shall be required for each phase.

(4) The permit may be suspended, revoked, or modified by the local issuing authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this Ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

Sec. 7-6. Inspection and enforcement.

(a) The City's Code enforcement officer or delegated official will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the local issuing authority shall regulate both primary and secondary permittees, as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this Ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this Ordinance.

(b) The City's Code enforcement officer or delegated official shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

(c) No person shall refuse entry or access to any authorized representative or agent of the local issuing authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(d) As a local issuing authority the City recognizes and agrees that the District or the Commission or both shall periodically review the actions of counties and municipalities which have been certified as local issuing authorities pursuant to O.C.G.A. § 12-7-8(a). The District or the Commission or both may provide technical assistance to the City for the purpose of improving the effectiveness of its erosion and sedimentation control program. The District or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.

(e) As a local issuing authority pursuant to Chapter 7 of Title 12 of the Official Code of Georgia the City recognizes and agrees that the Board, on or before December 31, 2003, has promulgated rules and regulations setting forth the requirements and standards for certification and the

procedures for decertification of a local issuing authority. The Division may periodically review the actions of counties and municipalities which have been certified as local issuing authorities pursuant to O.C.G.A. § 12-7-8(a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the District and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. § 12-7-8(a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7(e), the Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 30 days within which to take the necessary corrective action to retain certification as a local issuing authority. If the county or municipality does not take necessary corrective action within 30 days after notification by the Division, the Division may revoke the certification of the county or municipality as a local issuing authority.

Sec. 7-7. Penalties and incentives.

(a) *Failure to obtain a permit for land-disturbing activity.* If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this Ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the City of Varnell.

(b) *Stop-work orders.*

(1) For the first and second violations of the provisions of this Ordinance, the Director or the local issuing authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the local issuing authority shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or local issuing authority shall issue an immediate stop-work order in lieu of a warning;

(2) For a third and each subsequent violation, the Director or local issuing authority shall issue an immediate stop-work order; and

(3) All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

(4) When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the local issuing authority or by the Director or his or her designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop-work order shall be issued by the local issuing authority or by the Director or by his or her designee. All such stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

(c) *Bond forfeiture.* If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in

violation of this Ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of O.C.G.A. Section 12-7-7(f)(2). The issuing authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

(d) *Monetary penalties.* Any person who violates any provisions of this Ordinance, or any permit condition or limitation established pursuant to this Ordinance or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed \$2,500.00 per day. Notwithstanding any limitation of law as to penalties which can be assessed for violations of municipal ordinances, the City of Varnell Municipal Court or any other court of competent jurisdiction trying cases brought as violations of this Ordinance shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

Sec. 7-8. Education and certification.

After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent upon their level of involvement with the process, as developed by the Commission in consultation with the Division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.

Sec. 7-9. Administrative appeal/judicial review.

(a) *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by the issuing authority upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the City of Varnell acting as an appellate hearing body within 30 days after receipt by the issuing authority of written notice of appeal.

(b) *Judicial review.* Any person, aggrieved by a decision or order of the issuing authority, after exhausting his administrative remedies, shall have the right to appeal to the Superior Court of Whitfield County.

Sec. 7-10. Effectivity, validity, and liability.

(a) *Effectivity.* This chapter shall become effective on the date of its adoption by the Mayor and Council, the public health, safety and welfare requiring it.

(b) *Validity.* If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not effect the remaining portions of this chapter.

(c) *Liability.*

(1) Neither the approval of a plan under the provisions of this Ordinance, nor the compliance with provisions of this Ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the issuing authority or District for damage to any person or property.

(2) The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Ordinance or the terms of the permit.

(3) No provision of this Ordinance shall permit any persons to violate the Georgia Soil Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any waters of the state as defined thereby.

The foregoing Ordinance was read on _____, _____ and upon motion of _____, second by _____, and discussion, the question was upon the adoption of the Ordinance. The question called the vote was _____ ayes, _____ nays and the Ordinance Does/Does Not pass.

This _____ day of _____, 2010.

City Clerk

Witness:

Mayor