



Nancy Harris, Mayor
Jamin Harkness, Post 1
Marline Thomas, Post 2

Lamar Doss, Post 3
Manfred Graeder, Post 4
Greg Whitlock, Post 5

**AGENDA
SPECIAL CALLED
MEETING
AND WORK SESSION
MAYOR AND COUNCIL
CITY OF DULUTH, GA
3167 Main Street
Duluth, GA 30096**

SEPTEMBER 25, 2023

CITY HALL – COMMUNITY ROOM

5:30 PM

5:30 P.M. - CALL TO ORDER Mayor Harris or Mayor Pro tem Thomas

I. NEW BUSINESS

1. APPROVAL OF LEASE AGREEMENT – GROW DULUTH DEVELOPMENT

Approval of this item authorizes the Mayor to enter into a Lease Agreement between the City and Grow Duluth Development LLC, located at 3176 Main Street for public use of the parking lot.

2. BID AWARD – RED CLAY THEATRE SOUND SYSTEM

Staff recently published an RFP for replacement of the sound system at the Red Clay Theatre. Two companies responded.. After reviewing the RFP submissions against the published criteria, staff recommends awarding the bid to Baker Audio Visual in an amount of \$ 110,000. Purchase and installation of the new sound system is a SPLOST 2023 budgeted item.

II. EXEXECUTIVE SESSION

It may be necessary to hold an executive session on Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

III. ADJOURNMENT

PLEASE NOTE: This and other City meetings may be audio and/or videotaped for broadcast, transcription and/or archival purposes. As set forth in the Americans with Disabilities act (ADA) of 1990, the City of Duluth government does not discriminate on the basis of disability in the admission or access to or treatment of employment in its programs or activities, and complies with the requirements contained in section 35.107 of the Department of Justice regulations. All agenda packets may be converted to WCAG 2.0 compatibility format by emailing agenda@duluthga.net. In addition, any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program, or activity of the City of Duluth government should be made seven days prior to the event. Direct inquiries to the ADA Coordinator in the City Clerk office, located at 3167 Main Street, Duluth, GA. 30096, or by telephone at 770.476.3434.

**WORK SESSION AGENDA
MAYOR AND COUNCIL
CITY OF DULUTH, GA**

I. PUBLIC COMMENTS

Five minutes per person, maximum 6 speakers. *Sign-up sheet available.*

II. PRESENTATIONS/DISCUSSIONS/UPDATES

1. ANNUAL PAVING UPDATE

Public Works staff to present the annual paving update.

2. SCOTT HUDGENS PARK – AFU USAGE AGREEMENT

SUMMARY:

The City of Duluth has had a successful long standing usage agreement with West Gwinnett/ Atlanta Fire United Soccer Association (AFUSA) since 1999. The City has benefited from the years of partnership with the development of quality youth soccer programs, park maintenance and park infrastructure improvements.

Accordingly, staff is recommending continuing the usage agreement beginning December 29, 2023 and continuing until December 28, 2028. AFUSA shall have an option to renew said agreement for an initial period of five years followed by a second option to renew for a five year period.

IMPACT TO BUDGET: N/A

3. ELECTED OFFICIAL COMPENSATION

SUMMARY:

The salaries of the Mayor and Council were last increased in 1998. Based on a recent salary survey of five bordering cities, Duluth's elected officials ranked second to the lowest in compensation.

An action to increase the salary or compensation of elected members of the municipal governing authority is subject to several mandatory conditions and limitations. Staff will outline the conditions and limitations.

IMPACT TO BUDGET: TBD

4. CITY CHARTER AMENDMENTS

SUMMARY:

In 2022 an audit of the City's Municipal Code and Charter was performed. The amendments to the Municipal Code were approved and implemented. Amendments to the Charter are now being brought before the Council for consideration. Staff will outline the proposed amendments.

IMPACT TO BUDGET: N/A

5. MASSAGE ORDINANCE AMENDMENT

SUMMARY:

Under changes in state law, only the state is allowed to regulate massage therapists; local jurisdictions are no longer permitted to run background checks on employees of a massage establishment. Therefore, Chapter 7 Article VIII sections 7-248(b)(2), 7-248(b)(3), and 7-248(b)(5)(I) require amending.

Additionally, massage therapy businesses have traditionally only been allowed in the C-2 zoning district. With the establishment of the "PUD" category, staff recommends amending section 7-249(b) to read "No application for a massage therapy business license shall be granted unless the business is located in the C-2 zoning district, or in a planned unit development with an underlying zoning of C-2, or in a planned unit development where expressly permitted through a condition of zoning."

IMPACT TO BUDGET: N/A

6. PUBLIC SAFETY STAFFING CHANGES

SUMMARY:

Chief Carruth will provide an overview of an ambassador program she would like to implement. The program would reclassify two sworn positions into non-sworn (civilian) positions. This program is currently in use with the cities of Marietta and Milton.

Staff will then outline some changes relating to compensation of sworn officers and dispatchers. The proposed changes are intended to assist with recruitment and retention for public safety positions.

IMPACT TO BUDGET: TBD

III. MATTERS FROM COUNCIL

IV. ADJOURNMENT

The next scheduled meeting of the Mayor and Council is October 9, 2023 at 6:00 pm.

STATE OF GEORGIA

COUNTY OF GWINNETT

AGREEMENT FOR THE
LEASE OF REAL ESTATE

THIS AGREEMENT FOR THE LEASE OF REAL ESTATE is made and entered into by and between the **City of Duluth**, a duly chartered municipality of the State of Georgia (hereinafter referred to as "the City") and **Grow Duluth Development, LLC**, a Georgia limited liability company, (hereinafter referred to as "**Grow Duluth Development, LLC**").

WITNESSETH:

WHEREAS, the City is a Georgia municipal corporation wholly located within Gwinnett County; and

WHEREAS, **Grow Duluth Development, LLC** owns certain property which is more particularly shown on Exhibit A (hereinafter Parking Lot Property); and

WHEREAS, THE CITY and **Grow Duluth Development, LLC** desire to complete a land transaction that would result in the lease of the Parking Lot Property to THE CITY;

NOW THEREFORE, for and in consideration of the amounts set forth herein, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, THE CITY and **Grow Duluth Development, LLC** hereby agree as follows:

1. Agreement to Lease.

Grow Duluth Development, LLC leases to the City the portion of that tract or parcel of land lying and being in Land Lot 293 of the 6th Land District, City of Duluth, Gwinnett County, Georgia, shown in the aerial photograph marked Exhibit "A" (titled leased area) which is attached hereto and incorporated herein by reference. The City agrees to accept the property as is. The City acknowledges that any improvements made to the Parking Lot Property will remain with the property.

2. Payment, Use and Maintenance of Property.

The Parking Lot Property is leased to City in consideration of the payment of One Hundred Dollars (\$100.00), which shall be due upon execution of this Lease. The City will be solely responsible for all costs associated with any improvements to be made to the Parking Lot Property and will be solely responsible for maintenance of the property and the improvements for the entire term of this Lease. The City shall

be solely responsible for all utilities servicing the Parking Lot Property, as well as costs for the installation, transportation, maintenance and repair for said utilities for the entire term of this Lease. The City and **Grow Duluth Development, LLC** covenant and represent that the property being leased under this Agreement will not be used for any illegal purposes, and that the property will be used in accordance with all applicable State, Federal and local laws and regulations. The Parking Lot Property may be subleased to any other party for public use or private use provided that the proposed use is lawful and the sublease does not extend beyond the term of this Lease. Should any sublease create a taxable estate, the City or its sublessee shall be responsible for any taxes due on the property.

3. Warranties and Representations.

(a) **Grow Duluth Development, LLC**, hereby warrants and represents the following for the Parking Lot Property: That

- i) it has good, insurable and marketable title to its property, free and clear of all liens, encumbrances and restrictive covenants other than zoning ordinances affecting the respective property and general utility easements serving the property.
- ii) there are no special assessments against or relating to the property.
- iii) no goods or services have been contracted for or furnished to the property which might give rise to any mechanic's liens affecting all or any part of the property.
- iv) it has not entered into any outstanding agreements of sale, leases, options or other rights of third parties to acquire an interest in the property other than as disclosed herein.
- v) it has full power to lease the property on behalf of all parties having an interest therein.
- vi) to the best of its knowledge, no investigation, administrative order, consent order or agreement, litigation or settlement with respect to hazardous materials or hazardous materials contamination is proposed, threatened, anticipated or in existence with respect to the property and it has not received any notice of violation of any laws, rules or regulations regulating hazardous materials or any request for information from any federal or local governmental authority concerning hazardous materials and hazardous materials contamination on the property. The property neither is currently on, nor has the property ever been on, any federal or state "Superfund" or "Superlien" list.

- (b) The lease of the Parking Lot Property as set forth herein is contingent upon the substantial accuracy of the material representations and warranties set forth above.

4. Term.

The term of this Agreement shall be for a period commencing on September 18, 2023 and running up and through October 31, 2023.

5. Legal Approvals.

This Agreement has been duly authorized, executed and delivered by each party and all documents executed by each party which are to be delivered to the other party will be (a) duly authorized, executed and delivered by each party, (b) the legal, valid and binding obligation of each party, and (c) sufficient to convey a leased title and do not violate any provisions of any agreement or judicial order affecting that party.

6. Conditions of Lease.

The obligations of the parties under this Agreement are hereby expressly made subject to the truth and accuracy as of the date of this Agreement of each and every warranty or representation herein made by the other party.

7. No Broker.

The parties hereby warrant and covenant to each other that no real estate brokers or agents are involved in this transaction, with the consequence that no real estate commission shall be paid as a result of the closing of this transaction.

8. Notices.

Any notices required or permitted to be given under this Lease Agreement to the other party shall be in writing, postage pre-paid and will be sent by fax transmission, overnight delivery by courier of choice or registered or certified mail to:

GROW DULUTH DEVELOPMENT, LLC.

Address: 53 S. Main Street, Suite 300

Alpharetta, GA 30009

Attention: Ramon Gonzalez

David A. Weissmann

Weissmann Zucker Euster Morochnik & Garber P.C.

The Fountains at Piedmont Center
Building 11, Suite 950
3495 Piedmont Road
Atlanta, Georgia 30305
404.364.4620 direct
404.364.2320 facsimile

THE CITY:

3167 Main Street
Duluth, Georgia 30096
Attention: City Manager

With a Copy to:

Thompson, Sweeny, Kinsinger & Pereira P.C.
P.O. Box 1250
Lawrenceville, GA 30046
Attention: Stephen D. Pereira., Esq.

9. Miscellaneous.

- (a) Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" and "party" include corporation, partnership, individual, form, trust, or association wherever the context so requires.
- (b) Attorney's Fees. In the event it becomes necessary for either party to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this contract, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitations reasonable attorney's fees as determined by the court without a jury. As used herein, the term "prevailing party" shall mean as to the plaintiff, obtaining substantially all relief sought, and such term shall mean as to the defendant, denying the obtaining of substantially all relief sought by the plaintiff.
- (c) Time of Essence. The parties hereby agree that this Agreement was entered into with the understanding that time is of the essence.
- (d) Severability. In the event any provision, or any portion of any provision, of this Agreement shall be deemed to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalid, illegal or unenforceable provision or portion of a provision shall not alter the remaining portion of

any provision or any other provision, as each provision of this Agreement shall be deemed to be severable from all other provisions.

- (e) Inurement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.
- (f) Date of Agreement. The date of this Agreement shall be the date the last party signs a fully executed copy of the Agreement.

10. Modification of Agreement.

No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

11. Entire Contract.

This Agreement constitutes the entire agreement between the parties for the lease of the Parking Lot Property. All terms and conditions contained in any other writings previously executed by the parties regarding the respective properties shall be deemed to be superseded.

12. Mutual Drafting.

Each party has participated in the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.

13. Governing Law.

This Agreement and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the laws of the State of Georgia.

14. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which shall constitute one and the same document.

15. Special Stipulation.

During the term of this Agreement, the City agrees to maintain General Liability Insurance in an amount of at least one million dollars per occurrence that would cover claims made against **Grow Duluth Development, LLC**, its officers, agents

and employees, related to the use of the Parking Lot property by **Grow Duluth Development, LLC**. Nothing in this Agreement is intended to nor should be construed to waive any immunity or protection granted to the City by Federal or State law.

This Contract is agreed to this

This Contract is agreed to this

9th day of September, 2023.

_____ day of _____, 2023.

GROW DULUTH DEVELOPMENT, LLC.,

**CITY OF DULUTH,
GEORGIA**

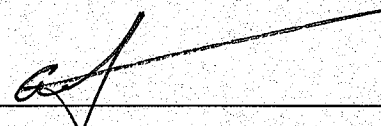
By:


Christian Martinello Managing Member

By:

Nancy Harris, Mayor

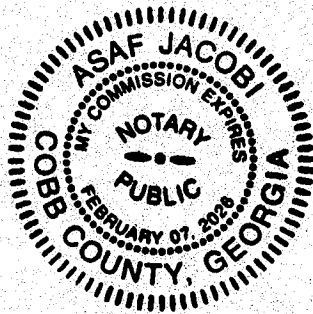
Attest:
Clerk



Attest:

Secretary

[SEAL]



[SEAL]

EXHIBIT A

AERIAL PHOTOGRAPH OF LEASED AREA

Parking Lot Lease 2023



USE AGREEMENT

This Use Agreement (hereinafter "Agreement") is made and entered into this ____th day of _____, 2023 by and between the City of Duluth, Georgia, a Georgia municipal corporation (hereinafter the "City") and Atlanta Fire United Soccer Association a Georgia not-for-profit corporation (hereafter "AFUSA, Inc.") This Agreement modifies and replaces the Agreement dated the 1st of March, 1999 by and between the City of Duluth, Georgia, and the Atlanta Fire United Soccer Association.

WHEREAS, the City of Duluth has entered into an intergovernmental agreement with the Georgia Department of Natural Resources (hereinafter the "DNR Agreement") whereby the City has acquired control over certain acreage located in Land Lots 325 and 326 of the 6th Land District in the City of Duluth, Gwinnett County, Georgia (hereinafter the "Property") which property is more particularly described in the DNR Agreement which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the DNR Agreement provides that the property shall be used for recreational purposes and specifically authorizes the City to allow use of the property by AFUSA, Inc. and

WHEREAS, AFUSA is a non-profit corporation that operates a youth soccer program affiliated with the Georgia State Soccer Association and is bound by the rules and regulations of membership in the GSSA and as an athletic association under Gwinnett County Parks and Recreation Department and is therefore subject to specific conditions detailed in the agreement with Gwinnett County; and

WHEREAS, all or a portion of the property has been used by AFUSA for recreational purposes under a prior use agreement with the City; and

WHEREAS, the Mayor and Council of the City of Duluth believe that allowing AFUSA to continue use said property to operate a youth soccer league would provide excellent recreational opportunities for the youth of the City of Duluth and would be in the best interest of the safety, health, morality and welfare of the citizens of the City of Duluth; and

WHEREAS, AFUSA, Inc. desires to provide soccer facilities open to participation by all youth residing in the City of Duluth and surrounding areas.

NOW THEREFORE, in consideration of the mutual promises, covenants and benefits contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by both parties, the City and AFUSA, Inc. agree as follows:

1. AFUSA, Inc. may construct and maintain such improvements on the Property as may be needed to allow the Property to be used as soccer fields. Improvements shall include, but not be limited to, grading to provide positive drainage, irrigation, mowing, landscaping, parking, drainage improvements, benches, goals, walkways, fencing, utilities, lighting, restroom facilities, and other improvements necessary or appropriate for developing the Property for use as soccer playing fields and related accessory improvements. All improvements to be constructed on the Property shall be subjected to approval by the City, shall be consistent with the Park Master Plan

as approved by City Council, and shall be consistent with the terms and conditions of the DNR Agreement.

2. AFUSA, Inc. will be permitted to schedule soccer matches, practice times, and other uses of the fields and to reserve use of the fields during the Spring and Fall soccer season as designated by the Georgia State Soccer Association. These seasons will generally consist of ten to twelve continuous weeks with the Spring season beginning in January of each year and the Fall season beginning in August of each year. Prior to the start of each season, AFUSA, Inc. will provide a field use schedule to the City identifying the scheduled game times and practice times for the entire season. Any other individuals or organizations requesting use of the fields during the Spring and Fall soccer seasons will be required to coordinate such use with the City and AFUSA, Inc. The City will coordinate use with AFUSA, Inc. according to the submitted field use schedule.
3. In consideration of the Property provided by the City and the use of the Property during the Fall and Spring seasons, AFUSA, Inc. agrees to maintain the Property during the entire year. Maintenance of the property shall include maintaining all facilities and improvements constructed on said Property, cutting, fertilizing, and manicuring all soccer fields constructed, providing all necessary irrigation and paying all utility costs associated with said irrigation, keeping said Property free and clear of litter and trash accumulation, mowing such areas which lie outside of the soccer fields as may be necessary to keep the Property in good and useable condition by the general public, keeping all restroom facilities and other facilities which may be constructed on the Property in good repair and in a clean and sanitary condition. AFUSA, Inc. shall be responsible for any and all utility costs associated with use and maintenance of the Property and shall be responsible for all costs associated with seeding, sodding, fertilizing, watering, or any other costs necessary for the proper maintenance of the Property. AFUSA, Inc. will pay a seasonal usage fee of \$600.00 for the restroom/concession building at SHP. Additional fees of \$600.00 a season will be applied for any usage outside regular fall and spring seasons. AFUSA, Inc. will be responsible for cleaning and stocking the building during soccer usage times. The City will be responsible for daily stocking and cleaning for other City scheduled use. During the summer, (June, July), the city will inspect the restrooms weekly. AFUSA will be responsible for cleaning the restrooms during summer tryouts, and team camps.
4. Nothing herein shall be construed to prohibit use of the Property by AFUSA, Inc. during times other than the Spring and Fall seasons as defined herein, however, any such use shall be coordinated with the City of Duluth and shall be subject to other uses of the Property by the City. AFUSA also fields all-star "traveling teams." These traveling teams hold tryouts and conduct practice sessions and schedule soccer matches at times throughout the year other than the Spring season and Fall season. AFUSA, Inc. shall coordinate any proposed use of the property by the traveling teams outside of the Spring or Fall season with the City and the City will attempt to accommodate such use when possible. In providing for use of the Property by the general public and by entities other than AFUSA, Inc. the City shall take responsible efforts to avoid harming

the improvements which may be constructed on the Property by AFUSA, Inc. or which may unreasonably increase the maintenance cost for AFUSA, Inc. Should a use of the Property approved by the City result in damage to the improvements or the fields maintained by AFUSA, Inc. pursuant to this agreement, the City and/or third-party user shall be responsible for restoring the Property to its condition prior to the use resulting in the damage. In addition, at the end of both the Fall season and the Spring season, AFUSA, Inc. shall analyze the condition of the fields and a maintenance plan shall be determined by the AFUSA, Inc. Board and the City of Duluth Director of Parks and Recreation. Both parties acknowledge that certain periods of maintenance may require restricted use or no use of the Property for a limited time period.

5. AFUSA, Inc. acknowledges that this Agreement between it and the City is subject to the terms and conditions of the DNR Agreement and the terms of the Agreement as to Limited Use between the City of Duluth, Georgia. AFUSA, Inc. acknowledges that it has read reviewed said Agreement and agrees that it will not take any action in consistent with the DNR Agreement. AFUSA, Inc. further acknowledges and agrees that should any provision in this Agreement be held to conflict with the DNR Agreement that the DNR Agreement shall control and shall be binding upon the parties.
6. In accordance with the provisions of the DNR Agreement, this Agreement is subject to approval by the Georgia Department of Natural Resources.
7. This Agreement shall be for a period beginning December 29, 2023 and ending on December 28, 2028. AFUSA shall have an option to renew said Agreement for an initial period of five years followed by a second option to renew for a period of five years. The option to renew shall occur automatically, unless either party shall provide written notice at least six months prior to the end of such period. Withstanding should the DNR Agreement terminate prior to termination of this Agreement, this Agreement shall automatically terminate on the same date.
8. AFUSA, Inc. shall defend, indemnify, and save harmless the City, its Mayor and Council, officers, agents, and employees from any and all suits, actions, legal proceedings, claims, demands, costs, expenses and attorney's fees incident to any claim or claims arising from AFUSA's use or maintenance of the Property. AFUSA shall maintain general liability insurance coverage in an amount of at least \$1,000,000.00 per person and \$3,000,000.00 per occurrence to protect against any liability to persons or properties which may occur on the Property as a result of AFUSA, Inc. use or maintenance of the Property under the terms of this Agreement. AFUSA, Inc. shall provide such proof of insurance as may be required by the City upon the request of the City, and said insurance shall not be canceled without at least sixty days' prior notice to the City. Nothing contained in this paragraph or elsewhere in this Agreement shall be construed to exist for the benefit of any third party, nor is any such language intended to nor shall such language be construed to in any way waive any protections or immunities provided to either the City of Duluth or the Department of Natural Resources under the laws of the Constitution of the State of Georgia.

9. AFUSA, Inc. will allow all City of Duluth residents to participate in its soccer program, provided said participants register in accordance with the scheduled registration dates of AFUSA, Inc. AFUSA, Inc. will ensure that City of Duluth residents are provided an opportunity for a rebate of 5% of one child's registration fee per registered household, whichever is greater. The City shall provide a rebate form to be made available to residents during registration. AFUSA, Inc. will only be required to rebate registrants that are confirmed as City residents by the City and who request such rebate. Only residents playing at Scott Hudgens Park or Bunten Park shall be eligible for such a rebate.

IN WITNESS WHEREOF, the parties have signed this Agreement by their duly authorized representatives on the date set forth by their signature.

ATLANTA FIRE UNITED SOCCER ASSOCIATION

By: _____

Title: _____

Date: _____

CITY OF DULUTH

By: _____
City Manager

Attest: _____
City Clerk

Date: _____

AMENDMENT TO THE CITY CHARTER

PART I

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by amending Number 23 – Specific Penalties of Section 1.13 of the Charter to read as follows:

SECTION 1.13 -Examples of Powers, Number 23

(23) *Specific penalties.* To provide penalties for violation of any ordinances adopted pursuant to the authority of this Charter and the laws of the State of Georgia ~~and to provide penalties for the violation of Gwinnett County board of health rules and regulations and Gwinnett County health and sanitation ordinances.~~

PART II

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Number 40 – Taxicabs of Section 1.13 of the Charter in its entirety.

~~SECTION 1.13 -Examples of Powers Number 40 -Taxicabs~~

~~(40) *Taxicabs.* To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to regulate the parking of such vehicles.~~

PART III

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 2.18 Organizational meetings in its entirety and replacing same with a new Section 2.18 Organizational meetings to read as follows:

SECTION 2.18. - Organizational meetings.

The city council shall hold an organizational meeting on the second Monday in January. The meeting shall be called to order by the [Mayor or] city clerk and the oath of the office shall be administered to the newly elected members as follows:

"I do solemnly (swear) (affirm) that I will faithfully perform the duties of (mayor) (councilmember) of this city and that I will support and defend the Charter thereof as well as the Constitution and laws of the State of Georgia and of the United States of America."

PART IV

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 4.14 – Certiorari of the Charter in its entirety.

~~Section 4.14. – Certiorari.~~

~~The right of certiorari from the decision and judgment of the municipal court shall exist in all criminal cases and ordinance violation cases, and such certiorari shall be obtained under the sanction of a judge of the Superior Court of Gwinnett County under the laws of the State of Georgia regulating the granting and issuance of writs of certiorari.~~

PART V

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 4.15 – Rules for Court of the Charter in its entirety.

~~SECTION 4.15 – Rules for Court.~~

~~With the approval of the city council, the judge shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the municipal court; provided, however, that the city council may adopt in part or in toto the rules and regulations applicable to superior courts. The rules and regulations made or adopted shall be filed with the city clerk, shall be available for public inspection, and, upon request, a copy shall be furnished to all defendants in municipal court proceedings at least forty-eight (48) hours prior to said proceedings.~~

PART VI

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.10 Applicability of general law in its entirety and replacing same with a new Section 5.10 to read as follows:

SECTION 5.10. - Applicability of general law.

All primaries and elections shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Municipal Election Code,' as now or hereafter amended.

PART VII

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.14 Special elections; interim appointments; vacancies in its entirety and replacing same with a new Section 5.14 to read as follows:

SECTION 5.14. - Special elections; interim appointments; vacancies.

In the event that the office of mayor or council member shall become vacant for any cause whatsoever, the city council or those remaining shall appoint a successor who shall serve until the next regularly scheduled election. Should the office which became vacant not be scheduled for election at the next regularly scheduled election, then the city council shall order a special election at the time of the regularly scheduled election to fill the balance of the unexpired term of the vacant position. The special election to fill the unexpired term shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Municipal Election Code," as now or hereafter amended.

PART VIII

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.15 – Other provisions in its entirety and replacing same with a new Section 5.15 to read as follows:

SECTION 5.15- Other provisions.

Except as otherwise provided by this Charter, the city council shall, by ordinance, prescribe such rules and regulations it deems appropriate to fulfill any options and duties under Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Municipal Election Code."

The remaining provisions of the charter of the City of Duluth, Georgia shall remain in full force and effect.

This Ordinance amending the charter of the City of Duluth, Georgia is adopted pursuant to the provisions of O.C.G.A. 36-35-3 and shall become effective upon its approval at a second meeting of the mayor and council and following publication as required by law.

FIRST ADOPTION

Approved and adopted by the mayor and council of the City of Duluth, Georgia this ____ day of _____, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa Lynn, Asst. City Mgr/City Clerk

SECOND ADOPTION

Approved and adopted the second time by the mayor and council of the City of Duluth,
Georgia this ____ day of _____, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa Lynn, Asst. City Mgr/City Clerk

**ORDINANCE
TO AMEND CHAPTER 7 OF THE DULUTH CODE - MASSAGE**

PART I

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by amending subsection (b) of Section 7-248 of Chapter 7, Article VIII, of the Code, to read as follows:

(b) *Application for license.*

(1) To operate a massage therapy business within the boundaries of the city, the applicant must first make application to the city clerk on a form provided by the city clerk or her designee, and submit to a criminal background check of the applicant along with any co-owners, partners and non-massage therapists who will act as a manager at the business. The applicant after having fully and truthfully completed such form and paying the prescribed fees and having received a license shall maintain and operate such business pursuant to the ordinances of the city and the laws of the state.

(2) Upon applying for a license with the city clerk, each applicant shall provide a true and correct copy or original of the state license for each and every massage practitioner, performing or anticipated to perform massage at its location, for inspection and copying. The applicant shall also supply ~~a set of fingerprints taken by the Duluth Police Department for each licensed massage therapist employed by the applicant and~~ two (2) forms of photo identification for each licensed massage therapist performing massage at its location. Failure of any massage therapy business to provide state licenses or photo identification fingerprints of its employees shall automatically result in the denial of the issuance of a city license to the applicant.

(3) ~~Subsequent to the city license being issued, the licensee shall, in person, furnish to the city clerk a true and correct copy or original of the state license, fingerprints taken by the Duluth Police Department and two (2) forms of photo identification for each new massage practitioner at the licensee's massage therapy business prior to such person's commencing to perform or offering to perform massage at such massage therapy business.~~ When any massage practitioner discontinues performing massage at a massage therapy business, the licensee shall make the departure known in writing to the city clerk within thirty (30) days of such departure.

(4) Each applicant for a license shall make his or her affidavit before the city clerk, on a form provided by the clerk, upon oath, swearing or affirming that all persons practicing massage on the premises of his or her massage therapy business are licensed massage therapists and that all requirements of this division for a license have been met.

(5) Each application under this section shall include but shall not be limited to the following information:

- a. A list of services to be provided.

b. The location, mailing address and all telephone numbers where the business is to be conducted.

c. The name and residence of each applicant and any agent as required by this chapter.

d. Proof that the applicant is at least eighteen (18) years of age.

e. Copy of two (2) forms of photo identification for each applicant such as driver's license or official identification card.

f. The name and a copy of the state license of each massage therapist that will be employed by the applicant.

g. Copy of two (2) forms of photo identification for each massage therapist that will be employed by the applicant.

h. A list of any and all criminal convictions of the applicant other than misdemeanor traffic violations, including the dates of conviction, description of the offense and the court where the conviction was received.

i. Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant(s) for the permit.

j. Any other state required affidavits or forms, including local benefit receipt affidavits.

k. Applicants must be at least eighteen (18) years of age, employ one (1) (which may include him/herself) or more massage therapists licensed in accordance with subsection (a) above, and if a corporation, is an officer of the corporation which is organized and authorized to do business pursuant to the laws of the state. The applicant to operate a massage establishment must be the owner of the premises wherein the business will be conducted or the holder of a lease thereon for the period to be covered by the certificate.

~~l. A set of fingerprints taken by the Duluth Police Department for each massage therapist employed by the applicant.~~

m. A set of fingerprints taken by the Duluth Police Department for each owner, partner, and manager of each massage business.

PART II

The Council of the City of Duluth hereby further ordains that the Duluth Code of Ordinances is hereby amended by amending subsection (b) of Section 7-249 of Chapter 7, Article VIII, of the Code, to read as follows:

(b) No application for a massage therapy business license shall be granted unless the business is located in the C-2 zoning district, or in a planned unit development with an underlying zoning of C-2, or where in a planned unit development where expressly permitted through a condition of zoning.

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IT IS SO ORDAINED this _____ day of _____, 2023.

Those councilmembers voting in favor:

Mayor Nancy Harris

Greg Whitlock

Manfred Graeder

Marline Thomas

Jamin Harkness

Lamar Doss

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

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