

ORDINANCE NO. _____

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF PERMITS FOR ASSEMBLIES, DEMONSTRATIONS, AND FOR OTHER USES OF COUNTY REAL PROPERTY, BUILDINGS AND STRUCTURES BY ORGANIZATIONS, GROUPS OR PRIVATE PERSONS; TO PROMOTE THE DISCHARGE OF GOVERNMENT DUTIES AND FUNCTIONS WHILE PRESERVING FUNDAMENTAL FREEDOMS; TO PROVIDE AN EFFECTIVE DATE; AND, FOR OTHER PURPOSES.

WHEREAS, the County owns real property, buildings and structures which are under the control and jurisdiction of the board of commissioners of the county.

WHEREAS, the real property, buildings and structures are maintained with funds of Habersham County and should be utilized in light of the primary governmental purposes for which the buildings were erected.

WHEREAS, the county has duties to control violence, maintain order and protect the right of non-participants persons and property to move upon public streets, roads, sidewalks, alleys, and all other public places; and to provide an environment conducive to the effective administration of justice and other essential governmental functions; and the transaction of public and private business.

WHEREAS, the First Amendment of the United States Constitution, among other things, guarantees freedom of speech, the right of people to peacefully assembly and the right to petition the government for a redress of grievance. These guarantees are applied to local governments by the courts through the Due Process Clause of the 14th Amendment.

WHEREAS, Paragraph V and Paragraph IX of Article I of Section I of the Constitution of the State of Georgia, among other things provides for freedom of speech and the right to assemble peaceably for their common good and to apply by petition or remonstrance to those vested with powers of government for redress of grievances.

WHEREAS, **protected** speech under the First Amendment is not equally permissible in all places and at all times. Furthermore, the First Amendment does not guarantee unlimited access to all government-owned property for purposes of expression. Government has the power to preserve the property under its control for the use to which the property is lawfully dedicated.

WHEREAS, the county has a definite, legitimate interest in regulating such access for security, welfare, health and the preservation of the peace and order if such regulations does not unduly infringe on protected expressive activities.

WHEREAS, the Habersham County Board of Commissioners desire by this ordinance to provide a written policy regarding the rules, fees and use of the real property, buildings and structure buildings during the time such are not used for a

governmental purpose by persons other than the county, and shall require that such regulations be complied with prior to use of county property by parties other than the county while preserving the fundamental freedoms enumerated.

NOW THEREFORE, BE IT RESOLVED AND ORDAINED, by the Board of Commissioners of Habersham County, Georgia, pursuant to the authority granted in O.C.G.A. 36-1-20, it is hereby ordains as follows:

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Section _____. Definitions.

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

Applicant/Sponsor: the person sponsoring or promoting the proposed parade, procession, assembly or demonstration.

County property: the exterior of any county building or structure as well as the real property surrounding and adjoining the county courthouse, including but not limited to lawns, sidewalks and parking lots.

Fighting words: words which are not protected as speech by the First Amendment to the United States Constitution, are not in any reasonable sense communication of information or opinion, and are generally epithets or personal verbal abuse directed towards another person in his presence that by their very utterance inflict injury or tend to incite an immediate breach of the peace; fighting words frequently include threatening, profane or obscene reviling, mass name-calling (that is, concerted or coordinated name-calling by two or more persons with intent to annoy, ridicule, insult or provoke a violent reaction) and will not ordinarily include derisive or annoying words except when these have the characteristic of plainly tending to incite the addressee to commit an immediate breach of the peace; in every case the circumstances of the utterance control whether particular words fall within this definition.

Mass picketing: picketing by a sufficient number of pickets in a manner that effectively prevents other persons with a right to be in the vicinity of the picketing from exercising their right to utilize the area, or facilities in the area, for the purposes to which it has been dedicated either by physical domination of the area or by threats, intimidation or coercion actually arousing or having a tendency to arouse a fear of bodily harm with respect to any person who does not comply with the wishes of the pickets.

Permit: a written authorization to applicant/sponsor by the county manager or designee to operate a parade, procession assembly or demonstration.

Picket: means any person engaged in the act of picketing.

Private organization and group of private persons: any firm, partnership, corporation, association, or group of individuals more than three in number, or their representatives, acting as a unit.

Private purpose: any purpose not commanded or directed by statute, ordinance, or other regulation to be performed by the state, county, or other governmental entity.

Public Assembly: a gathering of more than eight persons for a common purpose in a place open to the general public as a result of prior planning or a spontaneous gathering for a common purpose in a place open to the general public that continues in existence for more than 30 minutes.

Soliciting: the activity of a person in a place open and accessible to the general public who by spoken language directed to persons in the vicinity attempts to disseminate facts or opinions regarding any subject with intent to induce a specific response from any listener.

Sound amplification device and/or equipment: any device or equipment, whether electric, electronic or of another sort, used to amplify voices, music or any other sounds.

Section _____. Administration.

There is hereby vested in the county manager or designee the responsibility and the right to supervise and control, subject to the guidance from the board of commissioners should the board so deem it necessary, the use of county property by persons other than the county.

Nothing in this ordinance shall permit the county manager or designee to deny a permit based on political, social or religious grounds or based upon the views expressed.

Section _____. Permit Required.

(1) Every private organization or group of private persons who wishes to use county property for private purposes in holding an assembly, demonstration, picketing, or other activity is hereby required to have a permit from the county manager or designee, unless such a permit is prohibited under state law or the activity is otherwise exempted by law, ordinance, or other valid regulation.

(2) No person shall hold, promote, engage in, participate in, aid, form or start, by advertising or otherwise, a procession, a picket or assembly unless a permit has been issued. Such permit shall be issued by the county manager or designee; shall be in writing; shall be acknowledged by the appropriate municipality (if municipal property involved), shall specify the conditions under which issued; and shall remain in effect until suspended or revoked or until the picket, procession or assembly is terminated. The county manager or designee shall forward a copy of said permit to the Sheriff or his designee. The permit shall not be transferable or assignable; and a separate permit shall be required for each picket, procession or assembly. The county manager may be assisted by other employees of the board of commissioners.

Section _____. Alternate permit.

The county manager or designee, if denying an application for a permit or for an incomplete application, or otherwise shall be empowered to authorize the conduct on a date, at a time, or location different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within three (3) working days after notice of the action of the county manager or designee, file a written notice of acceptance with the county manager or designee. An alternate permit shall conform to the requirements of and shall have the effect of a permit under this article.

Section_____. Appeals

Any person aggrieved by the refusal of the county manager or designee to grant a permit or deem an application incomplete or the issuance of an alternate permit per Section____, may but is not required to appeal the denial or change of location to the Board of Commissioners by filing such appeal, within five (5) working days after the date of denial, said appeal shall state the grounds thereof. The Board of Commissioners shall hear said appeal at the next scheduled meeting.

Section____. Application and Fee.

(1) The permit shall be obtained by making application and payment of fee (if any, set by the Board of Commissioners) to the county manager on a form prescribed for such purpose by the county manager. The form shall state the name, address and phone number of the applicant, the name and address of the organization represented by applicant, if there is one, the date requested for a permit, the hours of use, whether or not amplification devices and/or equipment are to be employed on county property, the type of amplification devices which shall be used and the approximate number amplification devices to be used.

(2) If amplification device(s) to be employed, the permit application shall further contain the following statement:

"I agree and certify that all amplification device(s) and/or equipment used on county property on the above dates shall be used in such a manner so as not to interfere with the operation of businesses or residences located in the immediate area surrounding the county property."

(3) The application shall be signed by the applicant and submitted by the applicant together with the application fee, if applicable, to the county manager or designee.

(4) The county manager or designee shall review the application and determine if such application is complete and meets the requirements of this ordinance, including the payment of the permit fee, if applicable. The county manager or designee shall sign same, and make a signed copy available to the applicant within 3 working days, which copy (with application) shall serve as the permit. If all the requirements and acknowledgements of this ordinance have not been met, the county manager administrator shall notify the applicant within 3 working days and retain the application until such requirements have been met.

(5) All applications shall be made and signed by an individual citizen of the county, and all permits shall be issued in the name of such individual citizen. Once a permit is issued, such citizen shall be responsible for full compliance with the terms of this division. The application fee, if any, shall be set by the Board of Commissioners.

Section____. Use Limitations

Demonstrations, public assemblies and uses of county real property, buildings and structures as set forth herein shall be subject to the following limitations:

(1) Activities shall be conducted in compliance with the other laws and ordinances of the state and the city.

(2) Activities upon private property without the consent of the owner are prohibited.

(3) Activities are not permitted in areas of public buildings dedicated to clerical and office work.

(4) Activities that thwart the purpose to which the property upon which they occur is dedicated or that interfere with the normal use of such property by others with an equal right of access are prohibited.

(5) Activities that are inconsistent with or interfere with the rights of another group to assemble pursuant to a valid permit issued by the county manager or designee are prohibited.

(6) Whenever the number of attendees at an activity exceeds the natural capacity of the area or location so as to threaten the public safety or convenience the excess may be ordered to disperse by county law enforcement officials and, failing to do so, may be punished as provided by this article. The county manager, after study of areas or locations that are available for activities, shall set forth the maximum capacity of each such area and location so that the existence of an overflow crowd may be determined by a numerical count.

(7) Activities that violate the noise ordinance, sign ordinance, smoking ordinance or parking ordinance are prohibited.

(8) Activities shall not interfere, hinder, or stop vehicular or pedestrian traffic, nor create a traffic or safety hazard.

(9) No person present at activities shall conduct himself in a fashion that will establish a purpose or likelihood of causing or encouraging immediate violence.

(10) No person present at an activities ay be in possession of a weapon prohibited by O.C.G.A. §§ 16-11-127 and 16-11-127.1.

(11) The use of fighting words by any person in any activities is prohibited.

(12) No person shall recklessly or knowingly commit any act that may reasonably be expected to prevent or disrupt the function of any office or court proceeding occurring at government property.

(13) No person shall purposely, or recklessly and without authority of law, obstruct any street, sidewalk, hallway, office or other passageway of the county or courthouse property in such manner as to render it impassable without unreasonable inconvenience or hazard, or fail or refuse to remove such obstruction after receiving a reasonable or official request, or the order of a law enforcement officer to do so.

(14) No person shall willfully and knowingly enter or remain in any room, chamber, office or hallway within the county property with intent to disrupt the orderly conduct of official business, or to utter loud, threatening or abusive language, or engage in any disorderly or destructive conduct on such courthouse property.

(15) No person or group of persons may violate the noise ordinance, sign ordinance, smoking ordinance or parking ordinance.

Section _____. Violations and Penalties.

(1) *Criminal offenses.*

(a) *Violation of ordinance.* Any person who violates or fails to comply with any provision of this article shall be guilty of a misdemeanor and shall be subject to the processes of the superior court of the county, the state court of the county, or the magistrate court of the county.

(b) *Punishment for violations.* Any person or organization convicted of a misdemeanor or the violation of the terms of this article shall be punished as provided in Section 1.7 of the Code of Habersham County.

(c) Whenever the free passage of any street or sidewalk shall be obstructed, the persons composing such obstruction shall disperse or move on when directed to do so by a police officer. It shall be unlawful for any person to refuse to so disperse or move when so directed by law enforcement.

(d) No vehicles shall be used in any picket, demonstration or assembly. All assemblies, pickets or demonstrations shall be on foot.

Section _____. Proof of Permit.

For law enforcement purpose and trial it shall be presumed that no permit has been issued unless, at the time of the activity or trial, the accused produces a valid permit or a certified copy thereof.

Section _____. Subsequent Amendments, Other Fees.

This article shall be subject to amendment or repeal, in whole or in part, at any time, and no amendment or repeal shall be construed to deny the right of the county to assess, levy and collect any permit fees prescribed. The payment of any permit fee provided for in this article shall not be construed as prohibiting the assessment, levy or collection of additional permit fees upon the same person.

Section _____. Indemnification.

Prior to the issuance of any permit under this ordinance the county manager may require the execution of an indemnification or “hold harmless” agreement in favor of the county, its officers and employees, for any liability arising from the issuance of the permit.

Section _____. Financial responsibility.

Nothing in this article shall relieve any person or persons or organization from responsibility for any injuries or damages to persons or property, private or public, occasioned by their acts or omissions arising from the activity for which any permit under this article was issued.

Section _____. Scope.

The express enumeration of powers and rights in this article shall not be deemed a waiver of similar or related powers or rights inherent to county governments or delegated to county government by the state.

Section _____. Separability.

If any Section, sub-section, sentence, clause, phrase or any portion of the Ordinance be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the Commissioner to provide for separable and devisable parts and he does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Section ____ . Effective Date.

This Ordinance is hereby adopted this ____ day of _____, 2009, and shall be effective on ____ day of _____, 2009.

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