

## Chapter 40 Commercial River Outfitting in the Unincorporated Areas of the County

### Sec. 40-01. – Title.

This chapter shall be referred to as the Commercial River Outfitting Ordinance.

### Sec. 40-02. – Purpose.

The Gilmer County Board of Commissioners recognizes that recreational use of the County's streams and rivers includes the use of streams and rivers by rafts, kayaks, and other floating devices. The Board has found it necessary to manage whitewater recreation to protect the riparian environment and the safety, health, and welfare of river users and riparian landowners.

### Sec. 40-03. – Definitions.

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

*Boat rental* means the lease, rental, loan, or bailment for consideration of any floating device for use on any stream or river named in Section 40-04.

*Board of Commissioners* means the Gilmer County Board of Commissioners.

*Commercial river outfitter* means any person, group or business operating principally as a recreational company that provides floating devices and regularly charges a fee or imposes a charge of any nature to the general public or any member thereof, for transportation to/from or on a waterway or rental of said floating devices for use in the water.

~~use or activity on any stream or river named in Section 40-04 (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.~~

*Commercial river use* means any operation of a boat rental or commercial outfitter.

*Commercial river use permit* means a discretionary permit issued pursuant to this chapter that entitles the permittee to engage in commercial river use.

*Floating device* means any raft, kayak, canoe, inner tube, kickboard, water wheel, or similar object, or any "vessel" as defined by Harbors and Navigations Code § 21, as it may be amended from time to time. The term "floating device" expressly excludes U.S. Coast Guard approved personal flotation devices, Types 1 through 5.

~~*Recreation and Parks Departments* means the Gilmer County Recreation and Parks Department.~~

### Sec. 40-04. – Permit required.

No person or entity shall engage in commercial river use on the Cartecay, Ellijay and Coosawattee Rivers in the unincorporated areas of Gilmer County, except as authorized by a valid commercial river use permit in good standing.

### Sec. 40-05. – Permit issuance procedure.

Commercial river use permits shall be issued by the ~~Recreation and Parks Department~~Board of Commissioners. The procedure for permits is as follows:

A. The applicant should submit an application for a commercial river use permit, accompanied by a river use plan, and appropriate non-refundable fee, to the ~~Recreation and Parks Department~~Board of Commissioners on or before January 1 of each calendar year (or within 30 days after the adoption of this ordinance).

B. Within ~~60~~30 days of the deadline for receipt of the application and river use plan, the ~~Gilmer County Emergency Management Director~~Board of Commissioners~~Recreation and Parks Department~~ shall review them for compliance with the standards of this chapter ~~and submit a written report of its conclusions and recommendations to the Board of Commissioners. If the Recreation and Parks Department concludes that an applicant's river use plan is not complete or does not meet the standards of Section 40-07, it shall recommend that the application be denied.~~

C. ~~Upon receipt of the report from the Recreation and Parks Department,~~The matter shall be placed on the agenda of the next available meeting of the Gilmer County Board of Commissioners. The Board of Commissioners shall either approve the permit upon a finding that the application and plan meet all standards of this chapter; or, it shall deny the permit upon a finding that the application and plan do not meet one or more standards, identified in the finding, of this chapter.

D. Applicants who are denied a permit may file an appeal to the Superior Court of Gilmer County within 30 days of a decision of the Board of Commissioners. If the applicant does not file an appeal from any decision of the Board of Commissioners, as provided in this section, the decision of the Board of Commissioners shall be final.

E. Approved applicants must obtain a Gilmer County business license, provide proof that the real/personal property taxes are current and paid for the business and location at which the business is operating, and provide their Georgia Sales and Use Tax Registration number before the issuance of a permit.

~~F. Renewals shall be approved by the Recreation and Parks Department alone unless additional concerns and review is believed to be necessary. The Board of Commissioners shall consider those renewals so designated by the Recreation and Parks Department.~~

**Sec. 40-06. – Permit term and fees.**

A. Commercial river use permits shall be issued for a one-year term. The permit term shall run from January 1, or the date of the issuance, and end December 31 of each year.

B. A nonrefundable application and/or renewal fee for commercial river use permits ~~is~~will be \$100.00. This amount can change by resolution of the periodically set by the Board of Commissioners ~~by resolution.~~ Fees shall be payable in advance for the entire year, beginning January 1 and ending December 31, of each year. The payment of permit fees shall be a prerequisite to the issuance of a commercial use permit. Fees shall not be prorated for a part of a year. The full fee shall be payable for any part of a year. The suspension or revocation of any commercial use permit pursuant to this chapter shall not entitle the licensee to a refund or return of any portion of the permit fee.

**Sec. 40-07. – River use plan contents.**

The river use plan required by this chapter shall include, but need not be limited to, the following information:

- A. Applicant's name, mailing address, and location of place of business.
- B. If the place of business is not located in the County, the name, address, telephone number, and other relevant contact information of a local agent within the County who will be available in the event of emergencies or other problems.
- C. Full description of all activities proposed to be conducted under the commercial river use permit being sought.
- D. Full descriptions, including location, of all planned ingress and egress from the water (and the designation of the land use classifications for said access points so the Board of Commissioners can determine that the use is consistent with the land use district), as well as all rest stops, lunch stops, or other planned non-emergency stops on adjoining lands.
- E. Full description, including location, of the parking facilities for the permittee's commercial vehicles, employees, clients, and guests.
- F. Written proof that the applicant has obtained the landowners' or managing public agencies' permission for the activities planned on all lands specified in response to Subsections D and E of this section, if the applicant is not the landowner.
- G. Written confirmation that the permittee will provide shuttle transportation services to and from all points of ingress and egress. Vehicles used by permittee to transport clients, employees, or equipment shall meet all current State and Federal Vehicle Code requirements. Operators of the vehicles shall hold the necessary appropriate current state issued driver's license. All state and federal laws governing passenger limits, restraints and use shall be strictly observed.
- H. Full description of planned safety measures for river users including an evacuation plan to be implemented in the case of equipment failure, rising water, or other issues arising during the customer's time on the river.
- I. Written proof of bodily injury and liability insurance covering all activities of the permittee and the permittee's employees or agents relating to or incidental to river use pursuant to the permit sought. Liability insurance must be for a minimum coverage of \$1,000,000.00, which amount can change meet scope and amount standards set by resolution of the Board of Commissioners, must name the County, its officers and employees, as additional insureds and provide 30 day notice of cancellation to the County.

**Sec. 40-08. – Operational requirements and standards.**

- A. Each floating device used to traverse a stream or river shall carry one U.S. Coast Guard approved personal flotation device per person using the floating device.
- B. The number of persons using a floating device shall not exceed the floating device's design capacity, except in an emergency or rescue situation.
- C. All persons, groups or businesses who use the streams and rivers of the County for ~~recreational~~ ~~or~~ commercial purposes shall be subject to local and state laws regarding alcohol, littering and trespass.
- D. Commercial river outfitters operating between ~~Holt Bridge Road~~Lower Cartecay Road and the confluence of Clear Creek and the Cartecay River must also comply with the following:

1. Single air chamber “River Tubes” may be rented to customers at water levels at or below 2.45 feet on the Cartecay River as measured by the U.S. Geological Survey Gauge, which information is available at [http://waterdata.usgs.gov/nwis/uv?site\\_no=02379500](http://waterdata.usgs.gov/nwis/uv?site_no=02379500).
2. Inflatable crafts available for rental at levels above 2.45 feet must contain at least three separate inflatable compartments and be constructed of a tough rubberized fabric, or its equivalent capable of daily abrasion and abuse of a class III river.
3. All rental customers will be required to sign ~~(Parents or guardians will sign for the minors in their care)~~ a form ~~containing (provided by the Board of Commissioners) acknowledging~~ at a minimum the following ~~(which may be changed by resolution of the Board of Commissioner)(Parents or guardians will sign for the minors in their care):~~
  - a. Alcohol is forbidden on this section of river.
  - b. The ~~entire~~ river corridor is private property upstream of the take out on Mulkey Road and that leaving the riverbed is trespassing and prohibited except in an extreme emergency.
  - c. There are no restrooms on the river, so use the designated facilities before starting your trip.
  - ~~d. Diving into the river is extremely hazardous, and has resulted in severe and fatal injuries in the past.~~
  - ~~4. Guided trips provided by a commercial outfitter for a fee must following comply with the following:~~
    - ~~a. All guides must be certified instructors through the American Whitewater program or its equivalent.~~
    - ~~b. All guides must be certified in CPR and First Aid. A copy of a certificate of compliance for CPR and First Aid training from the American Red Cross or other equivalent training certification approved by the County must be provided for all employees and owners serving as river guides.~~
    - ~~c. One appropriately equipped first aid kit must be carried for each four boats in a commercially guided outing.~~

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**Sec. 40-09. – Permit transfer.**

Commercial river use permits may not be transferred.

**Sec. 40-10. – Cartecay River Corridor Improvement user fees.**

Commercial river outfitters utilizing the Mulkey Road access location between May 15<sup>th</sup> and September 15<sup>th</sup> Labor Day Holiday shall require each customer to wear a wristband (sold and designed by the Board of Commissioners) at all times while on the Cartecay River. Wristbands will be color coded for each commercial river outfitter and will be numbered sequentially. Wristbands will cost \$1.00 per wristband and shall be valid for only one day. collect a Cartecay River Corridor Improvement usage fee of \$1.00 per customer. This amount can change by resolution of the Board of Commissioners. The funds shall be totaled and remitted to the Board of Commissioners on a monthly basis payable by the 10<sup>th</sup> day of the month following collection.

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~~User Wristband~~ fees and River Corridor Donations shall be designated as restricted funds by the Board of Commissioners, kept separately in an account titled “Gilmer County Cartecay River Corridor Improvement User Fees” and used exclusively for capital improvements, including but not limited to access points, parking, restrooms and changing facilities, to the Cartecay River Corridor or patrolling of the Cartecay River Corridor.

Commercial river outfitters collecting a wristband fee shall be entitled to receive an administrative fee, which approximates the reasonable cost of handling and processing the wristband fee. This administrative fee shall be specified from time to time by resolution adopted by the board of commissioners

**Sec. 40-11. – Penalty for violation.**

A. Any commercial river outfitter determined to be violating any section of this Chapter, except Sections 40-10 and violations constituting a criminal act, for the first occasion, shall be notified by the ~~Recreation and Parks Department~~Board of Commissioners of the violation by a written warning. The warning must include a statement as to the violation and provide that the commercial outfitter has 10 days to remedy the violation to the sole satisfaction of the ~~Recreation and Parks Department~~Board of Commissioners.

B. Any commercial river outfitter determined to be violating the same section of this Chapter on a multiple occasion shall have their permit revoked immediately by either personal or written notification of same by the ~~Board of Commissioners~~Recreation and Parks Department.

C. Any commercial river outfitter determined to be violating Section 40-10 shall have their permit immediately suspend for a period of 10 days on the first violation. Any subsequent violations of Section 40-10 shall result in a suspension of their permit for a period of 4 weeks.

D. No commercial river outfitter shall be held liable for the activities of any customer after the customer has entered the river.

**Sec. 40-12. – Licenses constitute grant or privilege.**

All permits constitute a mere grant or privilege to carry on such business during the term of the permit subject to all the terms and conditions imposed by this article and related laws and other ordinances and resolutions of the county relating to such business. The granting of a commercial river use permit does not vest any right or entitlement to an extension or renewal beyond the permit period.

**Sec. 40-13. – Failure to obtain a commercial river use permit.**

No person shall act in the capacity of a paid commercial river outfitter or advertise or represent himself or herself as ~~a~~ commercial river outfitter in Gilmer County without first obtaining a permit as required by this chapter. Any person violating the provisions of this section shall be guilty of misdemeanor, punishable as provided in Section 1-9, which shall be in addition to all other remedies available, including those in this chapter.

**Sec. 40-14. – Prohibited operations.**

A. It is unlawful for any commercial river outfitter, guide, trip leader, or guide instructor to:

1. Violate the safety, safety equipment, and prohibited acts provisions outlined in this Chapter.
2. Operate in a careless or imprudent manner without due regard for existing conditions or other attending circumstances, or in such a manner as to endanger any person, property, or wildlife.
3. Operate with wanton or willful disregard for the safety of persons or property.
4. Operate or maintain physical control of, or allow any other person to operate or maintain physical control of, a vessel on a regulated trip if such outfitter, guide, or person is under the influence of alcohol or any controlled substance or any combination thereof.
5. Violate any provisions as outlined in the Commercial River Outfitter Permit.
6. Be under 18 years of age.

**Sec. 40-15. – Enforcement.**

This chapter shall be enforced by the Board of Commissioners or their designee.

~~A Gilmer County sheriff's deputy or a Gilmer County code enforcement officer shall have the authority to enforce this chapter.~~