

CITY OF STONECREST, GEORGIA

Honorable Mayor Jason Lary, Sr.

Council Member Jimmy Clanton, Jr. – District 1

Council Member Rob Turner- District 2

Council Member Jazzmin Cobble – District 3

Council Member George Turner- District 4

Council Member Diane Adoma – District 5

CITY COUNCIL MEETING AGENDA

October 16, 2017

10:00 a.m.

Stonecrest Library

3123 Klondike Road, Lithonia, Georgia

- I. CALL TO ORDER:** Mayor Jason Lary
- II. ROLL CALL:** Leah Rodriguez, Administrative Assistant
- III. INVOCATION:**
- IV. PLEDGE OF ALLEGIANCE:**
- V. PUBLIC COMMENTS:**
- VI. MINUTES:** Approval of Minutes of the Regular City Council Meeting of October 2, 2017
- VII. ADOPTION OF THE CITY COUNCIL AGENDA:**
- VIII. AGENDA ITEMS:**

OLD BUSINESS:

- 1. **Adoption** of an Ordinance to Amend Section 4.5.3, Section 4.5.14 and Section 4.5.20 of Chapter 4- Alcoholic Beverages of the City of Stonecrest
- 2. **Adoption** of an Ordinance to Amend the Soil, Erosion, Sedimentation and Pollution Control Ordinance
- 3. **Adoption** of the Ordinance for Film and Entertainment in the City of Stonecrest

4. **Adoption** of an Ordinance Levying an Excise Tax for the Wholesale of Alcoholic Beverages in the City of Stonecrest

NEW BUSINESS:

5. **Approval** of the Intergovernmental Agreement for Business Licenses and Related Taxes with Dekalb County
6. **First Read Only** of an Ordinance to Amend Chapter 4-Alcoholic Beverages of the City of Stonecrest.
7. Resolution to Establish the Education Advisory Committee for the City of Stonecrest

IX. CITY MANAGER COMMENTS:

X. CITY ATTORNEY COMMENTS:

XI. MAYOR AND COUNCIL COMMENTS:

XII. ADJOURNMENT:

XIII. EXECUTIVE SESSION:

WHEN AN EXECUTIVE SESSION IS REQUIRED, ONE WILL BE CALLED FOR THE FOLLOWING ISSUES: 1) PERSONNEL, 2) LITIGATION, 3) REAL ESTATE

CITY OF STONECREST, GEORGIA

Honorable Mayor Jason Lary, Sr.

Council Member Jimmy Clanton, Jr. – District 1

Council Member Rob Turner- District 2

Council Member Jazzmin Cobble – District 3

Council Member George Turner- District 4

Council Member Diane Adoma – District 5

CITY COUNCIL MEETING MINUTES

October 2, 2017

10:00a.m.

Stonecrest Library

3123 Klondike Road, Lithonia, Georgia

I. CALL TO ORDER: Mayor Jason Lary

II. ROLL CALL: All Present

III. INVOCATION: Council Member Rob Turner

IV. PLEDGE OF ALLEGIANCE:

V. PUBLIC COMMENTS:

Harold Smith spoke on the Special Land Use Permit in the city.

Dr. Barbara Lee spoke on the Special Land Use Permit.

Joel Thibodeaux spoke against the Amazon Project.

Teresa Hardy spoke in regarding to the moving of Confederate Monuments in the City of Stonecrest.

VI. MINUTES: Approval of Minutes of the September 18th and Special Called Meeting Minutes of December 21st.

City Attorney Kurrie noted Attorney Destiny Washington's name was misspelled and should be corrected. Council Member George Turner made a motion to approve the minutes of September 18th with the one correction and Council Member Clanton provided the second. **The motion carried unanimously.**

Council Member Rob Turner made a motion to approve the Special Called Minutes of September 21st with Council Member Adoma providing the second. **The motion carried unanimously.**

VII. ADOPTION OF THE CITY COUNCIL AGENDA:

Mayor Lary said he would like to add to the agenda an Ordinance levying an Excise Tax for the Wholesale of Alcoholic Beverages for a first reading. Council Member George Turner made a motion to add the Ordinance levying an Excise Tax for Wholesale of Alcoholic Beverage to the agenda as #7 with Council Member Adoma providing the second. **The motion carried unanimously.** Council Member Adoma made a motion to adopt the agenda with the one addition. Council Member George Turner provided the second. **The motion carried unanimously.**

VIII. PRESENTATIONS: There were no presentations.

IX. AGENDA ITEMS:

1. Adoption of the Ordinance Adopting Article X, Code of Ethics, in Chapter 2, Administration of the City Code.

Attorney Destiny Washington gave an overview of the Ordinance.

Council Member Adoma made a motion to approve the Ordinance to Adopt Article X, Code of Ethics in Chapter 2, Administration with Council Member Rob Turner providing the second. **The motion carried unanimously.**

2. Resolution to address the Removal of Divisive Memorial Monuments in the City of Stonecrest

Attorney Tom Kurrie gave an overview of the Resolution.

Council Member Rob Turner made a motion to approve the Resolution to address the Removal of Divisive Memorial Monument in the City of Stonecrest with Council Member Clanton providing the second. Council Member Adoma presented information regarding both people connected to the memorials and said she had spoken with many of her constituents. She said she wants unity and coming together with all races working together and therefore she will vote for what is best for the people of District 5. **The motion passed with Council Members Clanton, Cobble, Rob Turner, George Turner and Mayor Lary voting “yes”. Council Member Adoma voted “no”.**

3. First Read of an Ordinance to Amend Section 4.5.3 Section 4.5.14 and Section 4.5.20 of Chapter 4-Alcoholic Beverage in the City of Stonecrest.

Attorney Janelle Alleyne gave an overview of Chapter 4. She explained the difference in the alcohol and non-alcoholic permits for workers under 18 and older. She explained a youth does not have to be 18 years of age to work in a grocery store or movie theater and do not need a permit or background check.

This was the First Reading Only.

4. First Read of an Ordinance to Amend the Soil, Erosion, Sedimentation and Pollution Control Ordinance

Attorney Janelle Alleyne gave an overview of the amendment. She said these changes were a result of the EPD review.

This was the First Reading Only.

5. First Read of the Ordinance for Film and Entertainment in the City of Stonecrest

Attorney Tom Kurrie gave an overview. He spoke on permits on city property and filming on public property. He said this ordinance is a model of the City of Atlanta.

This was the First Reading Only.

6. Resolution for Amazon Project

Attorney Tom Kurrie gave an overview of the resolution for the Amazon Project. He explained the options of 1) create city within the city, 2) change the name of the City of Stonecrest to Amazon or 3) Do nothing. He also explained the affects Amazon would have on the City of Stonecrest. The resolution was read into the record.

A RESOLUTION AUTHORIZING A REQUEST TO THE GEORGIA GENERAL ASSEMBLY TO DEANNEX A PORTION OF THE CITY OF STONECREST TO BE INCORPORATED AS THE CITY OF AMAZON, GEORGIA.

WHEREAS, Amazon.com, Inc is a publicly traded U.S. Corporation and a leading internet retailer and technology company guided by the principles of customer obsession, passion for invention, commitment to operational excellence, and long-term thinking;

WHEREAS, On or about September 7, 2017, Amazon.com, Inc announced its plan to build and operate Amazon HQ2, the company's second headquarters, and has requested various states within the United States to submit proposals for sites for the Amazon HQ2 development;

WHEREAS, Amazon is expected to invest over \$5 billion in construction and grow Amazon HQ2 to include as many as 50,000 high-paying jobs with an average annual total compensation exceeding one hundred thousand dollars (\$100,000) over the ten to fifteen-year period following commencement of operations;

WHEREAS, the City Council is charged in its Charter to undertake such actions which promote the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the citizens of the City of Stonecrest;

WHEREAS, the City Council, having reviewed the Georgia Department of Economic Development request to qualified Georgia municipalities to submit to it a proposal for the site and development of the Amazon HQ2 in competition with other Georgia municipalities, believes responding to the proposal request is in the best interest of the citizens of Stonecrest, Georgia; and

WHEREAS, in connection with the City of Stonecrest's response to the proposal intends to propose a local act, for consideration by the Georgia General Assembly, to de-annex a portion of the City of Stonecrest, Georgia to be the city limits of a new city to be known as Amazon, Georgia.

WHEREAS, in connection with the City of Stonecrest's response to the proposal, it also intends to propose a local act, for consideration by the Georgia General Assembly to incorporate and provide for a charter for a new city to be known as Amazon, Georgia having the de-annexed area as the limits of said city.

NOW, THEREFORE, BE IT RESOLVED, and it is hereby resolved, by the Mayor and Council of the City of Stonecrest, Georgia, that:

- 1) The Mayor is authorized to proceed in taking such action necessary to request the Georgia General Assembly to pass local legislation that de-annexes a portion of property situated within the City of Stonecrest as the site of the development of the Amazon HQ2 in the City's proposal to the Georgia Department of Economic Development, but only to be effective if Stonecrest is selected as the site for Amazon HQ2.
- 2) The Mayor is authorized to proceed in taking such action necessary to request the Georgia General Assembly to pass local legislation to incorporate and approve a charter for a new city to be known as Amazon, Georgia having as its city limits, the property to be de-annexed by local act of the Georgia General Assembly but to be effective only if Stonecrest is selected as the site for Amazon HQ2.

SO, RESOLVED, this 2nd day of October, 2017.

Council Member Clanton made a motion to approve the resolution authorizing a request to the Georgia General Assembly to de-annex a portion of the City of Stonecrest to be incorporated as the City of Amazon, Georgia with Council Member George Turner providing the second. **The motion passed with Council Members Clanton, Rob Turner, George Turner and Mayor Lary voting yes. Council Members Adoma and Cobble voted no.**

7. First Read of Ordinance levying an Excise Tax for the Wholesale of Alcoholic Beverages in the City of Stonecrest.

Attorney Janelle Allylene gave an overview of the Excise Tax.

This was the First Read Only.

X. CITY MANAGER COMMENTS: No Comments

XI. CITY ATTORNEY COMMENTS: No Comments

XII. MAYOR AND COUNCIL COMMENTS:

Council Member Cobble and Rob Turner left at 12:45 p.m.

Council Member George Turner announced the Stonecrest Fest was this week and you could go to stonecrestfest.com for more information.

Council Member Adoma said to continue to pray for Puerto Rico. She announced her Townhall meeting on October 10th and Smart City Meeting on October 12th. She spoke

on a nonprofit who would cut your grass for free, a new veterans village and Job fair during Smart City meeting.

Council Member Clanton spoke on the Stonecrest Fest and Dekalb NAACP.

Mayor Lary thanked the council for the opportunity to compete for the Amazon Project.

XIII. ADJOURNMENT:

Council Member Adoma made a motion to adjourn at 12:55 p.m. with Council Member Clanton providing the second. **The motion carried unanimously.**

XIV. EXECUTIVE SESSION:

WHEN AN EXECUTIVE SESSION IS REQUIRED, ONE WILL BE CALLED FOR THE FOLLOWING ISSUES: 1) PERSONNEL, 2) LITIGATION, 3) REAL ESTATE



CITY COUNCIL AGENDA ITEM

SUBJECT: An Ordinance to Amend Section 4.5.3, Section 4.5.14 and Section 4.5.20 of Chapter 4-Alcoholic Beverage of the City of Stonecrest

☐ ORDINANCE	☐ POLICY	☐ STATUS REPORT
☐ DISCUSSION ONLY	☒ RESOLUTION	☐ OTHER

Date Submitted: 09/26/2017 First Read 10/02/2017 Council Meeting: 10/16/2017

SUBMITTED BY: Attorney Emily M. Preston

PURPOSE:

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

ORDINANCE 2017-_____

**AN ORDINANCE TO AMEND SECTION 4.2.10, SECTION 4.5.3, SECTION 4.5.14, AND
SECTION 4.5.20 OF CHAPTER 4 - ALCOHOLIC BEVERAGES, OF THE CITY OF
STONECREST, GEORGIA CODE OF ORDINANCES**

WHEREAS, the Georgia Alcoholic Beverage Code (O.C.G.A. § 3-1-1 et al.) regulates state-wide alcoholic beverage related activities in the State of Georgia;

WHEREAS, Pursuant to Section 1.03 of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the "City") has been vested with substantial powers, rights, and functions to generally regulate the use of real property and the sale of alcohol for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City;

WHEREAS, the City has the power to define, regulate, license, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare and safety of the inhabitants of the City, and to provide for the enforcement of such standards;

WHEREAS, the Mayor and City Council find it desirable and in the interest of the health, safety, and welfare of the citizens of the City to amend the City's alcohol ordinance in light of the evolving Georgia Alcoholic Beverage Code and the formation of the City; and

WHEREAS, the Mayor and City Council hereby find that regulating, prohibiting and/or defining certain conduct as set forth both below will further the goals set for in the Charter and protect the public health, safety and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED,

SECTION 1:

Section 4.2.10, of Article V, Division 1, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.2.10. - Issuance of license and employee permits; employee permit fees.

- (a) All employees of any licensed establishment must hold an employee permit, unless otherwise exempt under this Chapter. The conditions and procedures governing the issuance of alcohol permits for employees are set forth in this section.

- (b) An employee permit shall be issued unless the applicant fails to meet the qualifications for an employee permit under this chapter. Any employee permit identified in this chapter will be issued or the issuance of an employee permit will be denied within thirty (30) days after submission of a properly completed application or within fifteen (15) days of the records in subsection (d), whichever is later. An application for an employee permit is complete when it contains the information required by this chapter and is accompanied by the permit fee in the amount established by action of the city council. A permit shall be valid for twelve (12) months from the date of issuance. If a permit is not issued or denied within the time frame specified herein, the permit shall be automatically approved.
- (c) No person requiring a permit may be employed by or work in an establishment as defined in this chapter until such person has filed an application, paid the fee for and obtained a work permit from the City Manager or his designee. No person shall be issued a permit who has been convicted in this city, county, state, or in any federal court within five (5) years immediately prior to the application for employment for soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses or any charge relating to the manufacture or sale of intoxicating liquors or any felony or misdemeanor of moral turpitude.
- (d) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, mailing address, written proof of age (in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency), and a list of all prior criminal convictions. The City Manager or his designee shall make a complete search relative to any police record of the applicant. As a prerequisite to the issuance of any such initial permit or license, the employee shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records.
- (e) Any permit for employment issued hereunder shall expire twelve (12) months from the date of issuance unless earlier revoked or suspended. The City Manager or his designee may prescribe reasonable fees for certifying the eligibility for employment.
- (f) An employee holding a permit issued pursuant to this chapter shall at all times during his working hours have the permits available for inspection at the premises.
- (g) An employee shall provide his employer with a legible copy of his permit which copy shall be maintained by the employer as part of its business records.

SECTION 2:

Section 4.5.3, of Article V, Division 1, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.5.3. - Age restriction for employees in licensed establishments.

- (a) No person shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail if the employment violates state law, nor shall any person under the age of eighteen (18) years sell, take orders for, or deliver alcoholic beverages.
- (b) Nothing in subsection (a) of this section shall not be construed to prohibit employees employed in supermarkets, convenience stores, or drug stores from selling or handling alcoholic beverages which are sold for consumption off the premises as provided in O.C.G.A. § 3-3-24.

SECTION 3:

Section 4.5.14, of Article V, Division 2, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.5.14. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer, wine distilled spirits on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license under this chapter until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson, and bouncer. All employees holding nonalcoholic beverage permits shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include the applicant's name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, address, telephone number, the applicant's social security number, the date of birth with written proof thereof, and prior arrest record of applicant, though the fact of an arrest record shall be used for investigative purposes only and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the City Manager or his designee shall issue a permit to the employee, stating that the person fingerprinted or cleared is eligible for employment. If it is found that the person

fingerprinted is not eligible for employment, the City Manager or his designee shall not issue a permit to the employee.

- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher. This section does not apply to employees of theaters, as defined in Article 9 of Chapter 27 of the Code of the City of Stonecrest, whose duties are limited solely to those of concession sales, ticket sales, and ushers. All employees under this subsection shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (7) No licensee under this chapter shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the City Manager or his designee.
- (10) It shall be the responsibility of each licensee to provide all new employees at the time of their employment, and all employees annually, with an orientation and training on the this chapter. Failure of the employee to participate shall not be a defense for an employer whose worker or agent violates any provisions of this ordinance; and provided that a licensee shall keep a record of such orientation and training, which shall be subject to inspection.

SECTION 4:

Section 4.5.20, of Article V, Division 3, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.5.20. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer and/or wine on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the City Manager or his designee and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer. All employees holding nonalcoholic beverage permits shall be prohibited from selling, serving, or dispensing alcoholic beverages.

- (3) No permit shall be issued until such time as a signed application has been filed with the City Manager or his designee and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The City Manager or his designee shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the City Manager or his designee or the City Manager or his designee.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher. This section does not apply to employees of theaters, as defined in Article 9 of Chapter 27 of the Code of the City of Stonecrest, whose duties are limited solely to those of concession sales, ticket sales, and ushers. All employees under this subsection shall be prohibited from selling, serving, or dispensing alcoholic beverages.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the City Manager or his designee.
- (9) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the City Manager or his designee.

SECTION 5:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.
4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO RESOLVED AND EFFECTIVE this the ____th day of October, 2017.

Approved:

Jason Lary, Sr., Mayor

Thompson Kurrie, Jr., City Attorney

Attest:

Brenda James, City Clerk



CITY COUNCIL AGENDA ITEM

SUBJECT: An Ordinance to Amend Chapter 14, Article V Soil, Erosion, Sedimentation and Pollution Control Ordinance

☒ **ORDINANCE** ☐ **POLICY** ☐ **STATUS REPORT**
☐ **DISCUSSION ONLY** ☐ **RESOLUTION** ☐ **OTHER**

Date Submitted: 09/25/2017 **First Read:** 10/02/2017 **Council Meeting:** 10/16/2017

SUBMITTED BY: City Attorney Office

PURPOSE:

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance

ORDINANCE FOR THE AMENDMENT OF CHAPTER 14, ARTICLE V- SOIL EROSION,
SEDIMENTATION AND POLLUTION CONTROL

WHEREAS, the City of Stonecrest is authorized to regulate soil and water erosion under the Ga. Const., the Charter of the City of Stonecrest, the City's general police powers, and by other powers and authority provided by federal, state and local laws applicable hereto;

WHEREAS, the Charter of the City of Stonecrest provides for a transition period, during which time the City of Stonecrest shall transition ordinances from DeKalb County and adopt new ordinances; and

WHEREAS, the City of Stonecrest has determined that an amendment to the Soil, Erosion, Sedimentation and Pollution Control ordinance using the model ordinance bears a substantial relationship to the public welfare and achieves the purposes contained in the Code of the City of Stonecrest.

SECTION 1:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Stonecrest, Georgia, Chapter 14, Article V- Soil Erosion, Sedimentation and Pollution Control Ordinance of the Code of the City of Stonecrest, Georgia, is hereby amended in its entirety to read as follows:

CHAPTER 14, ARTICLE V- SOIL EROSION, SEDIMENTATION AND POLLUTION
CONTROL ORDINANCE

Sec. 14-500

This ordinance will be known as "Soil Erosion, Sedimentation and Pollution Control Ordinance."

Sec. 14-501 Definitions

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

1. Best Management Practices (BMPs):

These include 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 Commission as of January 1 of the year in which the land-disturbing activity was permitted.

2. **Board:** The Board of Natural Resources.
3. **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.
4. **Certified Personnel:** A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
5. **Coastal Marshlands:** Shall have the same meaning as in O.C.G.A. 12-5-282.
6. **Commission:** The Georgia Soil and Water Conservation Commission (GSWCC).
7. **CPESC:** Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.
8. **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 the excavated surface. Also known as excavation.
9. **Department:** The Georgia Department of Natural Resources (DNR).
10. **Design Professional:** A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by EnviroCert, Inc. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.
11. **Director:** The Director of the Environmental Protection Division or an authorized representative.
12. **District:** The DeKalb County Soil and Water Conservation District.
13. **Division:** The Environmental Protection Division (EPD) of the Department of Natural Resources.
14. **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 storm water management, drainage control, or flood control purposes.
15. **Erosion:** The process by which land surface is worn away by the action of wind, water, ice or gravity.
16. **Erosion, Sedimentation and Pollution Control Plan:** A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in Section 14-503 C. of this ordinance.
17. **Fill:** A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.
18. **Final Stabilization:** All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization

measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

19. **Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
20. **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.
21. **Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.
22. **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 Section 14-502, Paragraph 5.
23. **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.
24. **Local Issuing Authority("LIA"):** The governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.
25. **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.
26. **Natural Ground Surface:** The ground surface in its original state before any grading, excavation or filling.
27. **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 or suspended particles are present.
28. **NOI:** A Notice of Intent form provided by EPD for coverage under the State General Permit.
29. **NOT:** A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.
30. **Operator:** The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control 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 erosion, sedimentation and pollution control plan or to comply with other permit conditions.
31. **Outfall:** The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

32. **Permit:** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.
33. **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 the State of Georgia, any interstate body or any other legal entity.
34. **Phase or Phased:** Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.
35. **Project:** The entire proposed development project regardless of the size of the area of land to be disturbed.
36. **Properly Designed:** Designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the Manual as approved by the Commission up until the date of NOI submittal.
37. **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 roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
38. **Sediment:** Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.
39. **Sedimentation:** The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
40. **Soil and Water Conservation District Approved Plan:** An erosion, sedimentation and pollution control plan approved in writing by the DeKalb County Soil and Water Conservation District.
41. **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.
42. **State General Permit:** The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm water 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. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.
43. **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 Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
44. **Structural Erosion, Sedimentation and Pollution 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 and sediment traps, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.

45. **Trout Streams:** All streams or portions of streams within the watershed as designated by the Wildlife Resources 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, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov. 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.
46. **Vegetative Erosion and Sedimentation Control Measures:** Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:
- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or
 - b. Temporary seeding, producing short-term vegetative cover; or
 - c. 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*.
47. **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.
48. **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. 14-502- 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, "The Georgia Surface Mining Act of 1968".
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, fences, and other related activities which result in minor soil erosion;
4. The construction of single-family residences, when such construction disturbs less than one (1) 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 (1) 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 O.C.G.A. 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. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the Local Issuing Authority;

5. Agricultural operations as defined in O.C.G.A. 1-3-3, "definitions", 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 Section 14-503 C. of this ordinance, 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 (3) years after completion of such forestry practices;
7. Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
8. Any project involving less than one (1) 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 (1) acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainage ways 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 (1) acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, 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 section;

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, or the State Road and 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 the Department of Transportation or the State Road and 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 permit holders; and
11. Any public water system reservoir.

Sec. 14-503 MINIMUM REQUIREMENTS FOR EROSION, SEDIMENTATION AND POLLUTION CONTROL USING BEST MANAGEMENT PRACTICES

A. GENERAL PROVISIONS

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 14-503 B. & C. of this ordinance. 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,

sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

B. MINIMUM REQUIREMENTS/ BMPs

1. Best management practices as set forth in Section 14-503 B. & C. of this ordinance 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 Director 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 storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, 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 subsection (b).
 2. A discharge of storm water 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 subsection (f) of O.C.G.A. 12-5-30, 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 twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) 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 (5) acres.
 3. Failure to properly 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 subsection (f) of Code Section 12-5-30, 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.
 5. The LIA may set more stringent buffer requirements than stated in C.15,16 and 17, in light of O.C.G.A. § 12-7-6 (c).
- C. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. seq. 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 practicable 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, sedimentation and pollution 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 Section 14-503 B. 2. of this ordinance;
15. Except as provided in paragraph (16) and (17) 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, 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; or where bulkheads and sea walls are installed to prevent shoreline erosion on Lake Oconee and Lake Sinclair; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow, Unless exempted as along an ephemeral stream, 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

17. There is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with Chapter 5 of Title 12 of this title, the "Coastal Marshlands Protection Act of 1970." And the rules and regulations promulgated thereunder, 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 Code Section 12-2-8, where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286, for maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, where a drainage structure or roadway drainage structure is constructed or maintained; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, on the landward side of any currently serviceable shoreline stabilization structure, or for the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented. For the purposes of this paragraph maintenance shall be defined as actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after damage occurs. Maintenance does not include any modification that changes the character, scope or size of the original design and serviceable shall be defined as usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.
 - 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; 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
 - b. The buffer shall not apply to crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer, provided, however, that

- adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.
- c. The buffer shall not apply to any land-disturbing activity conducted pursuant to and in compliance with a valid and effective land-disturbing permit issued subsequent to April 22, 2014, and prior to December 31, 2015; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented or any lot for which the preliminary plat has been approved prior to December 31, 2015 if roadways, bridges, or water and sewer lines have been extended to such lot prior to the effective date of this Act and if the requirement to maintain a 25 foot buffer would consume at least 18 percent of the high ground of the platted lot otherwise available for development; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.
 - d. Activities where the area within the buffer is not more than 500 square feet or that have a "Minor Buffer Impact" as defined in 391-3-7-.01(r), provided that the total area of buffer impacts is less than 5,000 square feet are deemed to have an approved buffer variance by rule. Bank stabilization structures are not eligible for coverage under the variance by rule and notification shall be made to the Division at least 14 days prior to the commencement of land disturbing activities.
- D. Nothing contained in O.C.G.A. 12-7-1 et. seq. shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section 14-503 B. & C. of this ordinance.
- 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. 14-504 APPLICATION / PERMIT PROCESS

- A. GENERAL The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The Local Issuing Authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the owner and/or operator are the only parties 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 Stonecrest without first obtaining a permit from the Community Development Department to perform such activity and providing a copy of Notice of Intent submitted to EPD if applicable.
 2. The application for a permit shall be submitted to the Community Development Director, or his or her designee, and must include the applicant's erosion, sedimentation and

pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section 14-504 C. of this ordinance. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Section 14-503 B. & C. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by four (4) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.

3. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, 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. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 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 paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
4. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The District shall approve or disapprove a plan within 35 days of receipt. Failure of the 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 Section 14-503 C. 15, 16 and 17 have been obtained, all fees have been paid, and bonding, if required as per Section 14-504 B.6., have been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
5. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing 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 section 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 Section 14-503 B. & C. of this ordinance, 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 storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.
2. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

D. PERMITS

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
2. No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation and pollution 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 Section 14-503 C. 15, 16 and 17 are obtained, bonding requirements, if necessary, as per Section 14-504 B. 6. 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. Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the local issuing authority.

4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
5. 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.
6. The LIA may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).

Sec. 14-505 INSPECTION AND ENFORCEMENT

- A. The Community Development Director, or his or her designee, 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 primary, secondary and tertiary 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. Tertiary permittees shall be responsible for installation and maintenance where the tertiary 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 Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.
- C. The Community Development Director, or his or her designee, 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.
- D. 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.

- E. The District or the Commission or both shall semi-annually 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 any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion, sedimentation and pollution 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.
- F. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section 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 90 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 90 days after notification by the division, the division shall revoke the certification of the county or municipality as a Local Issuing Authority.

Sec. 14-506 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 Local Issuing Authority.

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 the 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 the 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 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 Section 14-504 B. 6. 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.

D. **MONETARY PENALTIES**

1. 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. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any City charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under county ordinances approved under 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. 14-507 EDUCATION AND CERTIFICATION

- A. 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 on 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.
- B. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-

disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

- C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.
- D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A. 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Sec. 14-508 ADMINISTRATIVE APPEAL, JUDICIAL REVIEW

A. ADMINISTRATIVE REMEDIES

The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution 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 Council within fifteen (15) days after receipt by the Local Issuing Authority of written notice of appeal.

B. JUDICIAL REVIEW

Any person, aggrieved by a decision or order of the Local Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal denovo to the Superior Court of DeKalb County.

Sec. 14-509 EFFECTIVITY, VALIDITY AND LIABILITY

A. EFFECTIVITY

This ordinance shall become effective on the 16th day of October, 2017.

B. VALIDITY

If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this ordinance.

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 Local 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 Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and
4. regulations promulgated and approved thereunder or pollute any Waters of the State as defined thereby.

SECTION 2:

All references in Chapter 27 of the Code of the City of Stonecrest and Chapter 14 of the Code of DeKalb County, as applicable in the City of Stonecrest during the transition period, to requirements and procedures for soil erosion, sedimentation, and pollution control in the City of Stonecrest shall refer to the requirements and procedures of this Soil Erosion, Sedimentation and Pollution Control Ordinance. In the event Chapter 27 or Chapter 14 conflict with this ordinance, the requirements, procedures and language of the Soil Erosion, Sedimentation and Pollution Control Ordinance shall control.

SECTION 3:

The Community Development Director shall also refer to the Director of the planning department or the Director of Planning and Sustainability.

SECTION 4:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality, or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO RESOLVED AND EFFECTIVE this the ____th day of October, 2017.

Approved:

Jason Lary, Sr., Mayor

Thompson Kurrie, Jr., City Attorney

Attest:

Brenda James, Interim City Clerk



CITY COUNCIL AGENDA ITEM

SUBJECT: An Ordinance for Article XIV, Section 15-Film Production

☒ **ORDINANCE** ☐ **POLICY** ☐ **STATUS REPORT**
☐ **DISCUSSION ONLY** ☐ **RESOLUTION** ☐ **OTHER**

Date Submitted: 09/25/2017 **First Read:** 10/02/2017 **Council Meeting:** 10/16/2017

SUBMITTED BY: Sabrina Wright- Economic Development

PURPOSE: This ordinance is to add an Article to Chapter 15 for Film Production for the best interest of the City and regulate the business of film production in the usage of public property to provide safety, peacefulness and benefit the general welfare of its citizens.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance

**AN ORDINANCE TO ADOPT A NEW ARTICLE XIV – FILM PRODUCTION TO
CHAPTER 15 OF THE CITY OF STONECREST, GEORGIA CODE OF ORDINANCES**

WHEREAS, the Georgia Revenue and Taxation Code (O.C.G.A. § 48-13-1 et al.) regulates Specific, Business, and Occupation Taxes in the State of Georgia; and

WHEREAS, Pursuant to Section 1.03(b)(4) of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the “City”) has been vested with substantial powers, rights, and functions to levy and provide for the collection of regulatory fees and taxes on privileges, occupations, trades, and professions as authorized by the Georgia Revenue and Taxation Code; and

WHEREAS, Pursuant to Sections 1.03(b)(20) and 1.03(b)(21) of the Charter of the City of Stonecrest, Georgia, the City may own certain real property and provide for the preservation and protection of such property in its usage by the public; and

WHEREAS, Pursuant to Section 1.03(b)(28) of the Charter of the City of Stonecrest, Georgia, the City is vested with the power to regulate and operate its public ways, parks and playgrounds, recreational facilities, cemeteries, public buildings, libraries, public housing, parking facilities, and charitable, cultural, educational, recreational, conservation, sport, detentional, penal, and medical institutions, agencies, and facilities within its city limits;

WHEREAS, Pursuant to Section 1.03(b)(34) of the Charter of the City of Stonecrest, Georgia, the City has broad powers to regulate the usage, maintenance, and repair of the City’s roads, bridges, walkways, and alley;

WHEREAS, Pursuant to Section 1.03(b)(29) Charter of the City of Stonecrest, Georgia, the City has the power to prevent and punish public disturbances;

WHEREAS, the City has the power to define, regulate, license, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare and safety of the inhabitants of the City, and to provide for the enforcement of such standards;

WHEREAS, the Mayor and City Council believe it is in the City’s interest to regulate the business of film production in its usage of public property to provide safety, peacefulness, and benefit the general welfare of its citizens.

NOW THEREFORE BE IT ORDAINED:

SECTION 1:

The Code of the City of Stonecrest, Georgia, is hereby amended by adding an article to Chapter 15 numbered Article XIV – Film Production, that reads as follows:

ARTICLE XIV - FILM PRODUCTION

Sec. 15.14.1. - Definitions.

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

Applicant means the individual applying for a permit, who is legally authorized to bind the Producer.

Application means the document created by the Department of Economic Development that must be completed and submitted to the Director by a producer or the producer's authorized representative, in order to request a permit.

Change request means the document created by the Director that must be completed and submitted to the Department of Economic Development by a producer or the producer's authorized representative in order to request a material change to a permit.

City means the City of Stonecrest.

Code means the City of Stonecrest, Georgia Code of Ordinances.

Department means the Department of Economic Development.

Department of Economic Development means the Department of Economic Development, and its designee.

Director means the Director of the Economic Department, and his or her designee.

Element means an activity that is listed in Code section 15.14.6 below.

Entertainment industry work means the production of motion pictures, television series, commercials, music videos, interactive games and animation, where the final product is intended to be commercially released and/or commercially distributed.

Filming means creating motion picture images on public property, including the on-site/on-location pre-production activities associated therewith, where the final product is intended to be commercially released and/or commercially distributed. Filming does not include activities performed as part of: 1) documenting current affairs; or 2) producing newscasts. In addition, Filming does not include location scouting.

Permit means a permit validly issued by the Department of Economic Development that authorizes Filming and the Elements contained therein, if any.

Producer means an individual, organization, corporation or any other entity that is ultimately responsible for the filming that is the subject of the application and the permit (where applicable).

Public property means real property owned by the city or for which the city is a lessee, including, without limitation, parks, streets, sidewalks, other rights of way, and buildings. Public property shall not include real property which is being leased by the city to a lessee.

Sec. 15.14.2. - Purpose and intent.

The intent of the city in adopting this entertainment filming ordinance is to facilitate entertainment industry work performed in Stonecrest while safeguarding the interests of Stonecrest's residents and businesses. This article strengthens the city's ability to anticipate and provide adequate services for the multiple filming projects throughout Stonecrest. It also enhances the city's ability to accommodate unanticipated circumstances and requested changes. The Department of Economic Development, similarly, will respond to the needs of Stonecrest's neighborhoods regarding entertainment industry work and will promote community awareness of the entertainment industry's impact upon Stonecrest's economic development. This article furthers the city's commitment to being a best-in-class location to work and to live.

Sec. 15.14.3. – Department of Economic Development as resource and liaison.

The Department of Economic Development will serve as a resource for Stonecrest's residents and businesses, providing information upon request about current or scheduled filming, helping to resolve problems that arise from entertainment industry work, and acting as a liaison between residents, businesses and the entertainment industry to address inconvenience experienced generally and with regard to a specific project. The Department of Economic Development will also serve as an ambassador to the entertainment industry, providing information, answering questions, helping to resolve challenges and facilitating the industry's work in the city. The Department of Economic Development will implement other mechanisms that enhance the experience of all people performing and effected by entertainment industry work, which may include an informational web-page and on-line permitting. While permits are required for entertainment industry work that occurs on public property only, the Department of Economic Development will be a resource and liaison for all entertainment industry work, including work that occurs on private property.

Sec. 15.14.4. - Permits for filming.

- (1) Any producer that wishes to perform filming must first obtain a filming permit. No filming permit is required unless the entertainment industry work is performed on public property.
- (2) Filming permits shall be issued by the Department of Economic Development. Permits shall be issued to the producer.
- (3) A permit will specify the filming that may occur at a particular location at a particular time. The permit will authorize element(s) to be performed as part of the filming provided that the elements have been approved by the Department of Economic Development. After receiving a permit, a producer may request modifications to the permit as described in subsection 15.14.8(1) below.
- (4) Where the filming application includes a request to close a city street, lane and/or sidewalk during the transition period for the City of Stonecrest, the request will be processed by DeKalb County in accordance with DeKalb County's ordinances, guidelines, and regulations.

- (5) A producer that receives a permit is responsible for knowing and complying with all other laws, including other ordinances and regulations, that establish prerequisites, authorizations and other required permissions applicable to the filming.
- (6) Where permitted filming includes signs or other displays of speech which would require a permit under Chapter 21 or otherwise be prohibited under the Code, the signs and/or displays must be removed upon the expiration of the permit.
- (7) Notwithstanding any other part of this Code, any producer that performs filming without receiving a permit, violates the material terms of a permit, or is otherwise in violation of this entertainment filming ordinance, shall be subject to the provisions of section 1-10 of the Code.
- (8) While it is the intent of the city to honor each permit, the issuance of such permit shall not grant the producer a constitutionally protected property interest.

Sec. 15.14.5. - Exemption from filming permit requirement—First amendment activity.

The following types of filming are exempt from the permitting requirement of subsection 15.14.4(1) above. This provision does not exempt a producer from complying with other applicable Code provisions, laws, ordinances or regulations that require elements or other activities included in the filming to be permitted or approved by the appropriate governmental entity.

- (1) Filming associated with any permitted or unpermitted rally, protest or demonstration, except when the same is staged for the sole purpose of being included in the filming's final product.
- (2) Filming associated with an outdoor event that is authorized by a city-issued permit, except when the same is staged for the sole purpose of being included in the filming's final product.

Sec. 15.14.6. - Filming elements.

- (1) An applicant shall indicate on the application each of the elements listed below that will be included in the filming.
- (2) The final decision of whether to allow the element shall be made by the Department of Economic Development, and communicated to the applicant by the Department of Economic Development. Prior to denying permission to perform an element, representatives of the Department of Economic Development shall consult with the producer in an attempt to find alternative ways to accommodate the producer's filming needs.
- (3) This section applies to the activities listed below only when they occur on public property. Where the element requires approval from an additional governmental jurisdiction, the producer must obtain that approval as well.
- (4) The elements are as follows:
 - (a) Night-time filming with the use of outdoor lighting where a residence exists within 150 feet from the location of an outdoor light;
 - (b) Filming in buildings that are owned by the city and not leased to a third party, or in buildings of which the city is a lessee;
 - (c) Use of intellectual property belonging to the city;

- (d) Closure of a street, lane and/or sidewalk;
- (e) Use of pyrotechnics or other explosives;
- (f) Smoke effects, water effects, or flame effects;
- (g) Display of real or artificial fire arms, grenades, or other weapons that would cause the public to fear violence;
- (h) Vehicle chases and/or vehicle crashes;
- (i) Dangerous stunts that have a reasonable likelihood of causing substantial personal injury;
- (j) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property;
- (k) Filming in a city park; and
- (l) Use of wild animals controlled under federal, state, county, or city law and/or ordinances.

Sec. 15.14.7. - Processing of permit applications.

A producer that wishes to perform filming must submit to the Department of Economic Development a completed application and the application fee set forth in code section 15.14.11 below. Where the producer is an organization, corporation or other entity, the application must be signed and submitted by an individual authorized to bind the producer. The Department of Economic Development will process the applications and the director will make permit determinations in accordance with this article XIV.

- (1) The application shall include, but not be limited to, the following:
 - a. The filming project name;
 - b. The name and contact information of the applicant, including postal address, email address, and telephone number;
 - c. A valid photo identification of the applicant;
 - d. The name and contact information of the producer (if the applicant is not the producer);
 - e. The dates, times and locations of the filming for which a permit is being requested, and a general description of the filming activity that will occur at each location;
 - f. A description of any elements that may be performed during the filming, including the dates, times and locations of each;
 - g. A description of any aspects of the filming, other than the elements, that may require city services;
 - h. A description of any assistance the producer may need from the City and/or concerns that the producer wants the City to be aware of; and
 - i. Where the producer is a student, an official letter or document from her/his school confirming that s/he is currently enrolled there. In addition, the student must appear in person and present her/his current student identification card and a valid driver's license. Where the student does not have a driver's license, s/he may present a different form of identification that includes her/his photo.

- (2) When more than one application is received for filming at substantially the same place and time, and the director reasonably determines that the filmings cannot logistically and/or safely occur together, the earlier or earliest of the applications that is received by the Department of Economic Development in a substantially completed form, which includes submission of the requisite application fee, shall be given priority as to the time and place requested. The Department of Economic Development shall make reasonable efforts to consult with the other applicant(s) in an attempt to find alternative times and/or locations that are acceptable.
- (3) Film permit applications must be submitted to the Department of Economic Development at least three (3) days prior to the proposed effective date of the permit to avoid rush permit fees as outlined in subsection 15.4.11(b) of this article XIV.
- (4) The Department of Economic Development shall compile and maintain rules and guidelines applicable to the use of public property for filming, including the elements that are part of the filming, and shall apply those rules and guidelines equally regardless of the subject matter of the filming and/or the content of the speech therein.
- (5) In the event that permission to perform an element is denied pursuant to subsection 15.14.6(2) above, the Department of Economic Development will process the remainder of the permit and grant all other aspects of the filming for which the requirements have been met.
- (6) The Department of Economic Development may deny an application only if the director reasonably determines that one or more of the below-listed conditions exists. Prior to denial, the Department of Economic Development shall make reasonable efforts to consult with the producer in an attempt to resolve issues of concern and/or find alternative ways to accommodate the producer's filming needs, as described in subsections 15.14.7(7), (8), (9) and (10) below.
 - a. The filming poses an unreasonable risk of personal injury or property damage to people or property not associated with the filming;
 - b. The filming poses an unreasonable risk of damage to public property that could not be quickly and/or fully remediated;
 - c. The date and time requested for a particular filming location conflicts with previously-issued permits or permissions for filming, outdoor events, or other activities;
 - d. Use of the filming location, or use of the location during the date or time requested, would unreasonably interfere with the operation of city functions;
 - e. Use of the filming location or the proposed activity at the location would violate a law, ordinance, statute or regulation, regardless of whether the illegal activity is part of the message or content of the filming. A permit shall not be denied based upon simulation of an illegal activity where the actual illegal activity is not being performed;
 - f. The producer owes an outstanding debt to the city;
 - g. The producer previously caused significant damage to public property and, at the time of submitting the application under consideration, failed to adequately repair the damage or pay in full the city's invoice for damage repair and restoration services;

- h. The producer previously violated this entertainment filming ordinance on two or more occasions, including without limitation by violating a material condition and/or restriction of a permit;
 - i. On two or more occasions, the producer's entertainment industry work in the city violated a city ordinance or other applicable law; and
 - j. The applicant made a material misrepresentation or gave incorrect material information on the application.
- (7) Prior to denying an application, if the Department of Economic Development determines that the requested filming includes one or more of the conditions described in subsections 15.14.7(6)a., b., c., or d. above, the Department of Economic Development shall employ reasonable efforts to identify alternative filming locations, times and/or dates that eliminate the unacceptable condition(s) and that are mutually acceptable to the producer and the city. The producer shall modify the application to incorporate any agreed-upon alternatives.
 - (8) Prior to denying an application, if the Department of Economic Development determines that the requested filming or related activity creates a violation as described in subsection 15.14.7(6)c. above, the Department of Economic Development shall allow the producer to revise the application so that the filming activities comply with applicable law.
 - (9) Prior to denying an application pursuant to subsections 15.14.7(6)f. or g. above, the Department of Economic Development shall notify the producer of the potential denial and allow her/him to remedy the conditions described in those subsections. The Department of Economic Development shall process the application after such repair, restoration or payment is complete, and may require the producer to obtain a refundable sanitation bond for the filming permit in an amount equivalent to the cost of the repair, restoration or debt.
 - (10) Prior to denying an application pursuant to subsections 15.14.7(6)h., i. or j. above, the Department of Economic Development shall provide the applicant an opportunity to present documents or other evidence that refutes the director's finding of previous permit violations, of previous violations of the law, or of misrepresentation or misinformation on the application, as applicable.
 - (11) Where the director has complied with subsections 15.14.7(7), (8), (9) and/or (10) above and reasonably determines that one or more of the conditions set forth in subsection 15.14.7(6) continues to exist and that the application should therefore be denied, the director shall issue a written communication to the applicant that includes a detailed explanation for the denial. Nothing in this subsection shall preclude the director from also notifying the applicant orally.
 - (12) If the director denies an application, the applicant shall have the right to appeal the decision to the City Manager or her/his designee, provided that a written request for such appeal is made to the City Manager within three business days after the applicant's receipt of the director's determination. The person considering the appeal must be impartial, and must have had no involvement in the director's decision. The appeal shall be heard or considered within three business days after the city receives the applicant's request, and shall be decided de novo. The person considering the appeal shall evaluate

the application and the director's decision in accordance with the criteria of this article XIV.

- (13) The person considering the appeal may issue her/his decision verbally, and shall issue a written decision within three business days of receiving written evidence from the applicant and/or meeting with the applicant, whichever is later. The written decision shall be the final decision of the city regarding the application. The applicant or producer may appeal the decision by writ of certiorari to the Superior Court of DeKalb County pursuant to the procedures set forth by Georgia law.
- (14) In no event shall the director's or any city employee's evaluation of whether to grant or deny the application, including any of the elements, include consideration of: a) the race, color, creed, religion, gender, age, disability, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, political affiliation or associational relationships of the applicant, producer or any person associated with the filming; or b) the message or content of the filming.

Sec. 15.14.8. - Modification, suspension or cancellation of a permit.

- (1) After receiving a permit, the producer may request a material modification of the permit at any time by submitting to the Department of Economic Development a change request and change fee as set forth in code section 15.14.11. The Department of Economic Development's ability to process the change request shall be determined pursuant to the provisions established for processing applications, as set forth in subsections 15.14.7(2) and (3) above. The director's decision of whether to grant or deny the modification request shall be determined as set forth in subsections 15.14.7(4) through 15.14.7(14). Submission of a change request will not impact the validity of the permit already issued, except upon written request of the producer.
- (2) Where a producer has obtained a permit and abides by the material requirements thereof, the permit shall prevent the city's stoppage of activities that are authorized by the permit, except as otherwise set forth in subsection 15.14.8(3) below or as a result of applicable law.
- (3) In the event that the Department of Economic Development identifies a substantial public health or safety risk arising from or caused by the filming, and the producer is in material compliance with the permit, the following shall occur:
 - (a) Where the substantial risk is identified prior to the commencement of the filming, the director shall employ reasonable efforts to consult with the producer and identify permit changes that are mutually acceptable to the producer and the city, and that remedy the health/safety issue(s). Where such efforts are unsuccessful, the director shall modify the permit in a manner that minimizes disruption of the filming as determined at the director's reasonable discretion, and that eliminates the substantial risk.
 - (b) Where the substantial risk is not imminent and is identified after the commencement of the filming, the director shall employ reasonable efforts to consult with the producer and identify permit changes that are mutually acceptable to the producer and the city, and that remedy the health/safety issue(s). Where such efforts are unsuccessful, the director shall modify the permit in a manner that minimizes disruption of the filming as determined at the director's reasonable discretion, and that eliminates the substantial risk as reasonably determined.

- (c) Where the substantial risk is imminent as reasonably determined and is identified after the commencement of filming, said department may place a stop work order on the filming if it finds that the order will likely alleviate the substantial risk. The stop work order may be issued without advance notice where the department deems that a delay of the order will jeopardize public health and safety, and shall be lifted as quickly as possible after the risk is eliminated. The director shall employ reasonable efforts to consult with the producer and identify permit changes that are mutually acceptable to the producer and the city, that will minimize the length and impact of the stop work order as decided by the producer, and that remedy the health/safety issue(s).
- (d) Changes made to the permit pursuant to this subsection 15.14.8(3) shall not require payment of a change fee.
- (4) Where the director determines that the producer is violating material term(s) of the permit, the director shall decide the appropriate remedial actions after consulting with the producer. If the director finds that a substantial public health or safety risk is arising from or caused by the material violation, the director may place an immediate stop work order on the filming without prior notice to the producer, and consultation with the producer shall occur after the work stoppage. The consultation between the director and producer shall evaluate the nature and severity of the violation, whether the violation was intentional, whether permit modifications should be made, whether the stop work order should be lifted (where applicable), and what other actions should be taken (if any).

Sec. 15.14.9. - Responsibilities of a producer once a permit is obtained.

- (1) A producer or producer's designee must have the permit on site at the time and location of the filming, and must also have on site any other permits required for that location by the department or any other governmental agency.
- (2) A producer must confine filming to the locations, times, guidelines and conditions specified in the permit and must abide by all other material terms of the permit.
- (3) Permits are not transferable.
- (4) A producer must clean and repair the filming location, and restore it to the condition it was in immediately prior to the filming, unless otherwise agreed upon in writing by the director and the producer. The department will inspect the filming location after the filming is completed to ascertain whether this requirement has been met. Where a producer fails to fulfill this requirement, the director will bill the producer for the cleaning, repair and/or restoration costs borne by the city, and the producer must pay the invoice in full within 30 days of receipt.
- (5) Permits shall require the producer to notify the department within three hours or sooner of learning of any emergency event regarding or arising from the filming that involves the media, the police or fire departments or emergency medical services.
- (6) A producer is responsible for: (a) knowing and complying with all city ordinances and other laws applicable to the filming and to the other activities arising from the producer's permit; and (b) requiring and using commercially reasonable efforts to enforce the requirement that any person working for or at the direction of the producer (including without limitation

contractors) complies with all city ordinances and other laws applicable to the filming and to the other activities arising from the permit.

- (7) The requirements of number (6) above shall include without limitation that the producer is responsible for obtaining any and all permissions, licenses or other required authorizations for use of intellectual property, including intellectual property which is on public property but is not owned by the city.
- (8) Permits shall prohibit a producer from acting as a representative or agent of the city, and from indicating city endorsement of the filming, except as otherwise agreed to in writing by the director. This provision shall not prohibit the producer's use of the city logo in the filming credits.
- (9) The director shall require that notification be given to residents and businesses within a three-block radius of a location for which a filming permit has been issued. The director may provide the notification, may require the producer to provide the notification, or may utilize a different mechanism for providing notification. The notification must state that a filming permit has been issued, and must include the date(s), time(s), location(s) and activities that are authorized by the permit. Additionally, the director shall require that notification be given to the council member representing the district in which the filming will occur. The director shall determine the most effective means and timing of notification based upon factors such as the type of impact that the filming will have on the neighborhood, the time between receipt of the application and commencement of the filming, the producer's budget and previous communications from a neighborhood regarding notification preferences.

Sec. 15.14.10. - Other permit requirements.

After a permit has been approved by the director, it will be issued once the following have occurred:

- (1) The producer signs an indemnification provision on the permit whereby the producer agrees to indemnify the city and its officials and employees from all claims, losses and expenses, including attorneys' fees and costs, that may arise from the permit and any of the activities performed pursuant to the permit by, on behalf of, or at the direction of the producer;
- (2) The producer signs a provision agreeing to comply with all applicable environmental laws, including an agreement not to allow legally-prohibited contaminants from entering the sewage and stormwater drainage systems serving the area where the filming will occur. The producer must sign a separate indemnification clause, such as the one described in number (1) immediately above, that pertains specifically to environmental breaches and includes without limitation the fines and clean-up costs associated therewith;
- (3) The producer obtains insurance coverage in an amount determined by the director, covers the city as an additional insured on the policy, and provides proof of the coverage.
- (4) The producer pays the permit fee and any other applicable fees set forth in section 15.14.11 below.

Sec. 15.14.11. - Fee schedule.

The department shall collect all applicable fees arising pursuant to this article. These fees are set forth below in this section 15.14.11, and in other sections of the Code pertaining to the cost of services or goods provided by other city departments.

- (1) *Filming permit fee.* A filming permit authorizes all filming for a particular filming project during a calendar month, regardless of the number of filming locations. A filming permit is valid through the last day of the calendar month and may be renewed for additional calendar months.
 - a. *Standard Permit Fee.* The following fees apply when the completed filming permit application is submitted more than three business days prior to the effective date of the permit:
 - (i) \$200.00 for original filming permit.
 - b. *Rush permit fee.* Where a completed filming permit application is submitted to the three or fewer business days prior to the effective date of the permit, the producer must pay the standard permit fee plus the rush fee set forth below in this subsection. Additionally, where a producer submits an application more than three business days prior to the effective date of the permit, the producer voluntarily may pay the standard permit fee plus the rush fee in order to have the application processed within three or fewer business days.
 - (i) \$300.00.
 - c. *Material changes to filming permit.*
 - (i) There is no charge for modifying a filming permit where the director reasonably determines that the modification is not material. For purposes of this article XIV, "material" means that processing the requested change will require an expenditure of city staff time or services that is more than de minimus.
 - (ii) There is no charge for a material change to a filming permit where a completed change request is submitted to the director more than three business days prior to the effective date of the permit. Where a material change is requested after the permit has taken effect, there will be no charge if the completed change request is submitted to the director more than three business days prior to the implementation of the requested change.
 - (iii) Where a change request for a material change is submitted to the director three or fewer business days prior to the effective date of the permit or the implementation date of the change, as described in subsection 15.14.11(1)c.(ii) above, the producer must pay the rush change fee set forth below in this subsection. Additionally, where a producer submits a change request more than three business days prior to the implementation of the requested change, the producer voluntarily may pay the rush fee in order to have the change request processed within three or fewer business days:
 - (A) \$100.00.

- d. Cancellation fee.
 - (i) Except as set forth in subsections 15.14.11(1)d.(ii) and (1)d.(iii) below, a filming permit fee is nonrefundable.
 - (ii) Where the producer submits a change request and the change results in cancellation of a filming permit for a particular calendar month, the producer may utilize the filming permit fee for the cancelled month to purchase a new filming permit for the same project for a different calendar month. Regardless of whether a new filming permit fee is owed, the director shall determine whether a rush fee is applicable based upon the timing of the change request and the standards set forth in subsection 15.14.11(2)c. above.
 - (iii) A filming permit fee is refundable if cancellation is required because of extraordinary circumstances for which the producer is not responsible and which are not within the producer's control. Inclement weather, except for declared states of emergency, and common illness shall not be deemed extraordinary circumstances.
- (2) *On-site services fee.* An on-site services fee is assessed for each public property location where filming occurs, as authorized by the filming permit, for each day that filming occurs at that site. Where a producer films at more than three locations in a day for the same filming project, s/he shall be charged an on-site services fee only for the first three locations.

Secs. 15.14.12 —15.14.100. - Reserved.

SECTION 2:

1. It is hereby declared to be the intention of the Mayor and City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and City Council to be fully valid, enforceable and constitutional.
2. It is hereby declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
3. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and City Council that such invalidity, unconstitutionality,

or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.
5. The within ordinance shall become effective upon its adoption.
6. The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO RESOLVED AND EFFECTIVE this the ____th day of October, 2017.

Approved:

Jason Lary, Sr., Mayor

Thompson Kurrie, Jr., City Attorney

Attest:

Brenda James, City Clerk



CITY COUNCIL AGENDA ITEM

SUBJECT: ORDINANCE LEVYING AN EXCISE TAX FOR THE WHOLESALE OF ALCOHOLIC BEVERAGES IN THE CITY OF STONECREST

☒ **ORDINANCE** ☐ **POLICY** ☐ **STATUS REPORT**
☐ **DISCUSSION ONLY** ☐ **RESOLUTION** ☐ **OTHER**

Date Submitted: 10/02/2017 First Read: 10/02/2017 Council Meeting: 10/16/2017

SUBMITTED BY: Attorney Janelle Alleyne

PURPOSE: This ordinance will allow the City to levy an excise tax on the wholesale of alcoholic beverages to persons holding a retail package license and or a consumption on the premises license.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Adoption of the Ordinance.

**AN ORDINANCE LEVYING AN EXCISE TAX FOR THE WHOLESALE OF
ALCOHOLIC BEVERAGES IN THE CITY OF STONECREST, GEORGIA**

WHEREAS, the Georgia Alcoholic Beverage Code (O.C.G.A. § 3-1-1 et al.) regulates state-wide alcoholic beverage related activities in the State of Georgia;

WHEREAS, Pursuant to subsection 38 of Section 1.03 of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the “City”) is vested with the power to levy and collect taxes and fees as allowed by law;

WHEREAS, Pursuant to O.C.G.A. §§ 3-4-80, 3-6-60, and Section 4.6.1. of the Code of Ordinances of the City of Stonecrest, Georgia, the City Council may, at its discretion, levy an excise tax upon all alcoholic beverages purchased from wholesalers by holders of retail package license and/or a consumption-on-the-premises license; and

WHEREAS, the Mayor and City Council find it desirable and in the interest of the City to adopt an ordinance levying an excise tax on the wholesale of alcoholic beverages.

SECTION I.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Stonecrest that the City imposes an excise tax on the wholesale of alcoholic beverages to persons holding a retail package license and/or a consumption-on-the-premises license at the following rates:

- a) Distilled spirits, excluding fortified wines, are hereby taxed at a rate of 22 cents per liter and a proportionate tax at the same rate on all fractional parts of a liter;
- b) Wines by the package, are hereby taxed at a rate of 22 cents per liter and a proportionate tax at the same rate on all fractional parts of a liter;
- c) Malt beverages, commonly known as tap or draft beer, sold in or from a barrel or bulk container, are hereby taxed at a rate of of \$6.00 on each container sold containing not more than 15 1/2 gallons and a proportionate tax at the same rate on all fractional parts of 15 1/2 gallons; and
- d) Malt beverages sold in bottles, cans, or other containers, except barrel or bulk containers, are hereby taxed at a rate of 5 cent(s) per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

SECTION II.

This Amendment shall be codified in a manner consistent with the laws of the State of Georgia and the City.

SECTION III.

(a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Amendment are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Amendment is severable from every other section, paragraph, sentence, clause or phrase of this Amendment. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Amendment is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Amendment.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Amendment shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Amendment and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Amendment shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION IV.

All ordinances and parts of ordinances in conflict with this Amendment herewith are hereby expressly repealed.

SECTION V.

The effective date of this Amendment shall be the date of adoption unless otherwise stated herein.

[signatures on following page]

ORDAINED this _____ day of _____, 2017.

CITY OF STONECREST, GEORGIA

Jason Lary, Sr, Mayor

ATTEST:

Brenda James, Acting City Clerk

APPROVED AS TO FORM BY:

Thompson Kurrie, City Attorney



CITY COUNCIL AGENDA ITEM

**SUBJECT: INTERGOVERNMENTAL AGREEMENT FOR BUSINESS LICENSES AND
RELATED TAXES BETWEEN DEKALB COUNTY AND CITY OF STONECREST**

☐ ORDINANCE ☐ POLICY ☐ STATUS REPORT
☐ DISCUSSION ONLY ☐ RESOLUTION ☒ OTHER

Date Submitted: 10/09/2017 Work Session: 10/11/2017 Council Meeting: 10/16/2017

SUBMITTED BY: Attorney Laura Cosgray

PURPOSE: This agreement is between the City of Stonecrest and Dekalb County for Business Licenses and related taxes.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Approval of the Agreement

October 9, 2017

**INTERGOVERNMENTAL AGREEMENT
FOR BUSINESS LICENSES AND RELATED TAXES
between
DEKALB COUNTY, GEORGIA AND
THE CITY OF STONECREST, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into effective as of July 1, 2017, by and between DeKalb County, Georgia (the "County") and the City of Stonecrest, Georgia (the "City");

WHEREAS, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Stonecrest is a municipality created by the 2016 Georgia General Assembly pursuant to Senate Bill 208 (hereinafter referred to as "SB 208"); and

WHEREAS, SB 208 provides that the City Council of the city of Stonecrest may take action binding on the City; and

WHEREAS, SB 208 provides Stonecrest with a 24 month transition period before it must assume and exercise all powers of a municipality; and

WHEREAS, SB 208 provides that "...[d]uring the transition period, all ordinances of DeKalb County shall remain applicable within the territorial limits of the city unless otherwise amended, repealed, or replaced by the City of Stonecrest"; and

WHEREAS, SB 208 provides "[a]ny transfer of jurisdiction to the City of Stonecrest during or at the end of the transition period shall not in and of itself abate any judicial proceeding pending in DeKalb County or the pending prosecution of any violation of any ordinance of DeKalb County"; and

WHEREAS, the creation of the City of Stonecrest allows the County and Stonecrest to enter into an intergovernmental agreement whereby the County will transition business license issuance and maintenance services related to applicants located within the new municipal boundaries of Stonecrest to the City of Stonecrest; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following terms shall be defined as:

“Business license services” means performing all administrative functions and business operations to impose and collect taxes and fees associated with new or renewal applications within the boundaries of the City of Stonecrest for business license, new or renewal applications for alcohol license, hotel/motel tax, rental car tax, energy excise tax, financial institution tax, including but not limited to the occupation tax (“occupancy tax”) and the fees authorized and described more fully in O.C.G.A 48-13-1 *et seq.* and in the Code of DeKalb County, Georgia sections 15-1 through 15-70, to impose and issue and collect the taxes, licenses, permits and fees authorized and described more fully in O.C.G.A, Title 3, Chapters 1 through 12 and in the Code of DeKalb County, Georgia, sections 4-1 through 4-100.

“The Code” means the Code of DeKalb County, Georgia as Revised, 1988, and as may be amended during the term of this agreement.

ARTICLE 2 TERM OF AGREEMENT

The term of this Agreement is acknowledged to have commenced on January 1, 2017 at 0000 hours and concluding at 2400 hours on June 30, 2017. At the conclusion of this term, the City will be solely responsible for business license services within its boundaries. The parties further agree that, as of the termination date, the County's obligation (pursuant to O.C.G.A. § 36-31-8 and SB 208 (2016) to provide the services covered by this Agreement shall terminate, and that this provision constitutes the agreement for the assumption of these services by the City as contemplated by O.C.G.A. § 36-31-8 and SB 208 (2016).

ARTICLE 3 COMPENSATION AND CONSIDERATION

3.1 For the services to be rendered pursuant to this Agreement, the County remains entitled to impose and retain all of the 2017 administrative and permit fees charged monthly within the unincorporated area of DeKalb County for business license services. Nothing in this Agreement shall preclude the County's right to continue to perform business license services during the term of this Agreement within the boundaries of the city of Stonecrest. Nothing in this Agreement shall preclude the County's right to continue to collect past due taxes and fees owed to the County for business license services performed within the boundaries of the city of Stonecrest.

3.2 The County has collected taxes and fees for business license services provided by the County for calendar year 2017. Therefore, the County agrees to provide an accounting to the City of all 2017 revenue collected by it during or prior to the term of this agreement for business license services within the municipal boundaries of the city of

October 9, 2017

Stonecrest. The City and County agree that fifty percent (50%) of all monies collected by the County for all business license services and occupational taxes within the municipal boundaries of the city of Stonecrest for calendar year 2017 are payable to the City. Based on the term of this Agreement and services herein, the County shall remit the total amount of \$1,208,500.21 to the City on or before October 15, 2017. In exchange for and in consideration thereof, the City agrees to provide all administrative and maintenance services associated with all existing and any new business licenses for the second half of calendar year 2017, beginning July 1, 2017, including services regarding County issued business licenses for the area within the municipal boundaries of Stonecrest.

ARTICLE 4 SERVICES

4.1 During the term of this Agreement, the County agrees to provide business license services for the area within the municipal boundaries of the city of Stonecrest. The County agrees to provide such services in compliance with applicable state law and the Code. The County has no obligation to provide business license services within the municipal boundaries of the city of Stonecrest after June 30, 2017.

4.2 During the term of this Agreement, the City agrees that the County is authorized to enforce the Code, and that such provisions shall apply within the territorial limits of the City.

4.4 Beginning July 1, 2017, the City agrees that the County will not have any responsibility to issue business licenses or collect taxes and/or fees for business license services for the area within the municipal boundaries of the city of Stonecrest. As a result, nothing in this Agreement including but not limited to sections 4.1 and 4.2, is intended to abrogate or restrict the City from enacting ordinance regulating business through business license services in any way the City sees fit. No provision in the Code that regulates business through business license services shall have any effect within the territorial limits of the city of Stonecrest. It is the City's express intention to regulate business through business license services beginning July 1, 2017 and to allow holders of County issued business licenses for calendar year 2017 that are located within the municipal boundaries of the city of Stonecrest to continue activity under the County issued license through the life of the license, as granted, unless a revocation of such a holder's license by the City is warranted prior to the expiration.

4.5 The City and the County agree that the Magistrate Court of DeKalb County retains jurisdiction for violations of the Code through June 30, 2017. During the term of this Agreement, all fines, penalties and fees for violations of the Code for cases arising in the territorial limits of the City shall be remitted to the County in the same manner as those fines, penalties and fees of the for violations of the Code would be remitted to the County from cases arising in the unincorporated area of the county for violations.

October 9, 2017

ARTICLE 5 EMPLOYMENT STATUS

5.1 All DeKalb County personnel performing services under this Agreement, are and will continue to be employees of the County for all purposes, including but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions. All DeKalb County employees will continue to report under the management structure established in the County.

5.2 In the event the City Manager becomes dissatisfied with the performance of any personnel performing the services identified in this intergovernmental agreement on behalf of the City, the City Manager shall discuss the concerns with the Executive Assistant of DeKalb County.

ARTICLE 6 RECORDKEEPING AND REPORTING

The Finance Director or designee shall prepare and deliver a collection report to the City Manager identifying the calendar year 2017 business licenses issued for the area within the municipal boundaries of the city of Stonecrest. Except as limited by any provision of state or federal law, the City may request, review and access data and County records, at a mutually agreed upon time, to ensure compliance with this Agreement.

ARTICLE 7 TRANSITION

7.1 Upon the expiration of this Agreement, the Finance Director of the DeKalb County or designee shall present a summary report to the City Council within 30 days of the conclusion of this Agreement to facilitate the transition.

7.2 The County and City agree that upon the expiration of this Agreement, if either party determines it is necessary, the City Manager, the Executive Assistant and the Finance Director will meet and confer to effect a smooth transition.

ARTICLE 8 CURE

8.1 In the event that either party breaches a material term or condition of this Agreement, other than an event of default, the party in breach, upon receipt of a written request from the non-breaching party, shall remedy the breach within five (5) business days of receipt of the request. If the breach is not cured within the specified time period, the non-breaching party may utilize the remedies of declaratory judgment, specific performance, mandamus or injunctive relief to compel the breaching party to remedy the breach.

October 9, 2017

8.2 The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

ARTICLE 9 AMENDMENTS

This Agreement may be modified at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City. Council and approved by official action of the County governing authority.

ARTICLE 10 NOTICES

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Notices shall be addressed to the parties at the following addresses:

If to the County:

Zachary L. Williams, Chief Operating Officer
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030
404-371-2883, Office Number
404-371-2116

With a copy to:

O. V. Brantley, County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
404-371-3011, Office Number
404-371-3024, Facsimile Number

If to the City:

Michael C. Harris, Interim City Manager
3120 Stonecrest Blvd.
Stonecrest, Georgia 30038
770-224-0200, Office Number

With a copy to:

Thompson Kurrie, Jr., City Attorney
City of Stonecrest
3475 Lenox Road, NE, Suite 400
Atlanta, Georgia 30326
678-987-0936, Office number

October 9, 2017

**ARTICLE 11
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 12
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement, together with the Attachments, constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings.

**ARTICLE 13
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or is construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 14
BINDING EFFECT**

This Agreement shall insure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 15
COUNTERPARTS**

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

October 9, 2017

IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers.

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)
Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara Sanders
Ex Officio Clerk of the
Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

Terry G. Phillips
Senior Assistant County Attorney

Zachary L. Williams
Executive Assistant

THE CITY OF STONECREST, GEORGIA

Jason Larry, Sr.
Mayor

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

Municipal Clerk (SEAL)

Thompson Kurrie, Jr.
City Attorney



CITY COUNCIL AGENDA ITEM

**SUBJECT: ORDINANCE TO AMEND CHAPTER 4-ALCOHOLIC BEVERAGES OF
THE CITY OF STONECREST**

☒ **ORDINANCE** ☐ **POLICY** ☐ **STATUS REPORT**
☐ **DISCUSSION ONLY** ☐ **RESOLUTION** ☐ **OTHER**

Date Submitted: 10/09/2017 Work Session: 10/11/2017 Council Meeting: 10/16/2017

SUBMITTED BY: Attorney Janelle Alleyne

PURPOSE: This ordinance will give you two options. 1). Appeals heard by Board with 3 members and 2). Appeals heard by 5 Rotating Hearing Officers of Attorneys

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: First Read Only

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

ORDINANCE 2017-_____

**AN ORDINANCE TO AMEND CHAPTER 4 - ALCOHOLIC BEVERAGES, OF THE
CITY OF STONECREST, GEORGIA CODE OF ORDINANCES**

WHEREAS, the Georgia Alcoholic Beverage Code (O.C.G.A. § 3-1-1 et al.) regulates state-wide alcoholic beverage related activities in the State of Georgia;

WHEREAS, Pursuant to Section 1.03 of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the "City") has been vested with substantial powers, rights, and functions to generally regulate the use of real property and the sale of alcohol for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City;

WHEREAS, the City has the power to define, regulate, license, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare and safety of the inhabitants of the City, and to provide for the enforcement of such standards;

WHEREAS, the Mayor and Council wish to amend Chapter 4 of the Code of Ordinances for the City of Stonecrest, Georgia to provide for an Alcohol Review Board consisting of five Alcohol Review Hearing Officers.

NOW THEREFORE BE IT ORDAINED:

SECTION I.

Section 4.3.1., of Article III, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.3.1. – Alcohol Review Board establishment; composition

- (a) There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall have the responsibility for alcoholic beverage appeals. The ARB shall consist of five (5) alcohol review hearing officers selected from the available pool of individuals licensed to practice law in the State of Georgia, ~~one from each district in the City of Stonecrest~~, who shall be appointed by the mayor and confirmed by the city council. Any member must comply with the requirements of Section 2.14 of the Charter of the City of Stonecrest and shall serve a term of two (2) years.

- (b) At the initial appointment of the ARB, to occur within 30 days of the passing of this ordinance, Mayor and Council shall direct three (3) of the five (5) members to serve a term of two (years). The remaining members shall serve a term of one (1) year.
- (c) Any member may be removed in accordance with Section 2.14 of the Charter of the City of Stonecrest.

SECTION II.

Section 4.3.2., of Article III, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.3.2. - Alcoholic beverage appeals.

The alcoholic beverage appeals shall be heard by one of the five the ARB alcohol review hearing officers, selected on a rotating basis, who shall have the following duties: ~~The alcoholic beverage appeals shall be heard by the ARB, who shall have the following duties:~~

- (a) To hear appeals from decisions of the City Manager or his designee denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city;
- (b) To hear appeals from the decisions of the City Manager or his designee revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;
- (c) To hear appeals from the decisions of the City Manager or his designee denying the issuance of permits pertaining to employment in a licensed establishment;
- (d) To hear appeals from the decisions of the City Manager or his designee revoking or suspending an employee permit to an employee of a licensed establishment.

SECTION III.

Section 4.3.3., of Article III, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.3.3. - Hearings.

- (a) No license or permit under this chapter shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.
- (b) The City Manager or his designee shall provide written notice to the applicant or licensee of the decision to deny, suspend or revoke the license or permit. Such written notification shall notify the applicant or licensee of the right of appeal. Any applicant or licensee who is aggrieved or adversely affected by a final action of the City Manager or his designee may have a review thereof by appeal to the alcoholic beverage appeals hearing officer. Such appeal shall be by written petition filed with the city clerk within fifteen (15) days from the final decision or action by the city.
- (c) A hearing shall be conducted on each appeal within thirty days of the date of filing of the appeal, unless a continuance of such date is agreed to by the appellant and the issuing department. The

appellant at such hearing shall have the right to be represented by an attorney at the expense of the appellant, and to present evidence, cross-examine witnesses, and have the hearing transcribed.

- (d) ~~A majority of the members of the ARB shall constitute a quorum. All findings of the ARB must be approved by a majority of the quorum. The City Manager shall develop additional hearing rules, which shall comply with the guidelines of due process set forth in O.C.G.A § 3-3-2(b).~~
- (e) The findings of the ARB shall be forwarded to the appellant and the City at the conclusion of the hearing.
- (f) The findings of the ARB shall be final unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

SECTION IV.

This Amendment shall be codified in a manner consistent with the laws of the State of Georgia and the City.

SECTION V.

(a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Amendment are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Amendment is severable from every other section, paragraph, sentence, clause or phrase of this Amendment. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Amendment is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Amendment.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Amendment shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Amendment and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Amendment shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION VI.

All ordinances and parts of ordinances in conflict with this Amendment herewith are hereby expressly repealed.

SECTION VII.

The effective date of this Amendment shall be the date of adoption unless otherwise stated herein.

SECTION VIII.

The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

ORDAINED this _____ day of _____, 2017.

CITY OF STONECREST, GEORGIA

Jason Lary, Sr, Mayor

ATTEST:

Brenda James, Acting City Clerk

APPROVED AS TO FORM BY:

Thompson Kurrie, City Attorney

colemantalley.com

3475 Lenox Road, NE
Suite 400
Atlanta, GA 30326
Phone (770) 698-9556
Fax (770) 698-9729

MEMORANDUM

To:

From: Janelle Alleyne

Date: October 4, 2017

Re: City of Stonecrest - Ordinances
Our File No. 36367.008TK

Current Ordinance – Appeal Heard by Board with 5 Members

Establishes an Alcohol Review Board for the City of Stonecrest.

- Five-member board, 1 member chosen from each district to be appointed by the Mayor and confirmed by the Council;
- Each member serves a two-year term;
- Appeals are heard by entire board
- Must comply with the board member requirements as stated in the Charter
 - o Must be residents of the city
 - o Cannot hold an elective office in the city or DeKalb County
 - o May be removed for cause by a majority vote of Council

Amendment Option 1 – Appeal Heard by Board with 3 Members

Same as Current Ordinance EXCEPT:

- Three-member board appointed by the Mayor and confirmed by Council;
- Two-year, staggered terms for Board Members;

Amendment Option 2 – Appeal Heard by Rotating Hearing Officer (attorney)

Establishes an Alcohol Review Board for the City of Stonecrest.

- Five-member board selected from an eligible pool of attorneys who are residents of Stonecrest, to be appointed by the Mayor and confirmed by Council;
- Each member serves a two-year, staggered term; and
- Appeals are heard by one member of the board, with the member to be determined on a rotating basis.
- Must comply with the board member requirements as stated in the Charter
 - o Must be residents of the city;
 - o Cannot hold an elective office in the city or DeKalb County;
 - o May be removed for cause by a majority vote of Council.

«Recipient_full_name»

«current_date_long»

Page 2 of 2

Amendment Option 3 – Appeal Heard by Hearing Officer (City Manager)

Currently, the City Manager is the issuing official for Alcohol Permits. If you wish to place the City Manager as the hearing officer for alcohol appeals, we will need to establish a new issuing official for alcohol permits as the City Manager should not hold both roles (avoiding transparency and oversight issues). This would require a rewrite of Chapter 4.

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

ORDINANCE 2017-_____

**AN ORDINANCE TO AMEND CHAPTER 4 - ALCOHOLIC BEVERAGES, OF THE
CITY OF STONECREST, GEORGIA CODE OF ORDINANCES**

WHEREAS, the Georgia Alcoholic Beverage Code (O.C.G.A. § 3-1-1 et al.) regulates state-wide alcoholic beverage related activities in the State of Georgia;

WHEREAS, Pursuant to Section 1.03 of the Charter of the City of Stonecrest, Georgia, the City of Stonecrest (the "City") has been vested with substantial powers, rights, and functions to generally regulate the use of real property and the sale of alcohol for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City;

WHEREAS, the City has the power to define, regulate, license, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare and safety of the inhabitants of the City, and to provide for the enforcement of such standards;

WHEREAS, the Mayor and Council wish to amend Chapter 4 of the Code of Ordinances for the City of Stonecrest, Georgia to provide for a three-member Alcohol Review Board.

NOW THEREFORE BE IT ORDAINED:

SECTION I.

Section 4.3.1., of Article III, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.3.1. – Alcohol Review Board establishment; composition

- (a) There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall have the responsibility for alcoholic beverage appeals. The ARB shall consist of ~~five (5)~~ three (3) members, one from each district in the City of Stonecrest, who shall be appointed by the mayor and confirmed by the city council. Any member must comply with the requirements of Section 2.14 of the Charter of the City of Stonecrest and shall serve a term of two (2) years.
- (b) At the first appointment of the alcohol review board, Mayor and Council shall direct two (2) of the three (3) members shall serve a term of two (years). The remaining member shall serve a term of one (1) year.

- (c) Any member may be removed in accordance with Section 2.14 of the Charter of the City of Stonecrest.

SECTION II.

- (d) Section 4.3.3., of Article III, of Chapter 4 of The Code of the City of Stonecrest, Georgia, is hereby amended to read as follows:

Sec. 4.3.3. - Hearings.

- (a) No license or permit under this chapter shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.
- (b) The City Manager or his designee shall provide written notice to the applicant or licensee of the decision to deny, suspend or revoke the license or permit. Such written notification shall notify the applicant or licensee of the right of appeal. Any applicant or licensee who is aggrieved or adversely affected by a final action of the City Manager or his designee may have a review thereof by appeal to the alcoholic beverage appeals hearing officer. Such appeal shall be by written petition filed with the city clerk within fifteen (15) days from the final decision or action by the city.
- (c) A hearing shall be conducted on each appeal within thirty days of the date of filing of the appeal, unless a continuance of such date is agreed to by the appellant and the issuing department. The appellant at such hearing shall have the right to be represented by an attorney at the expense of the appellant, and to present evidence, cross-examine witnesses, and have the hearing transcribed.
- (d) A majority of the members of the ARB shall constitute a quorum. All findings of the ARB must be approved by a majority of the quorum.
- (e) The City Manager shall develop additional hearing rules, which shall comply with the guidelines of due process set forth in O.C.G.A § 3-3-2(b).
- (f) The findings of the ARB shall be forwarded to the appellant and the City at the conclusion of the hearing.
- (g) The findings of the ARB shall be final unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

SECTION III.

This Amendment shall be codified in a manner consistent with the laws of the State of Georgia and the City.

SECTION IV.

(a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Amendment are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Amendment is severable from every other section, paragraph, sentence, clause or phrase of this Amendment. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent

allowed by law, no section, paragraph, sentence, clause or phrase of this Amendment is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Amendment.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Amendment shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Amendment and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Amendment shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION V.

All ordinances and parts of ordinances in conflict with this Amendment herewith are hereby expressly repealed.

SECTION VI.

The effective date of this Amendment shall be the date of adoption unless otherwise stated herein.

SECTION VII.

The provisions of this Ordinance shall become and be made part of The Code of the City of Stonecrest, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

ORDAINED this _____ day of _____, 2017.

CITY OF STONECREST, GEORGIA

Jason Lary, Sr, May

ATTEST:

Brenda James, Acting City Clerk

APPROVED AS TO FORM BY:

Thompson Kurrie, City Attorney



CITY COUNCIL AGENDA ITEM

**SUBJECT: RESOLUTION TO ESTABLISH THE EDUCATION ADVISORY
COMMITTEE OF THE CITY OF STONECREST**

☐ ORDINANCE ☐ POLICY ☐ STATUS REPORT
☐ DISCUSSION ONLY ☒ RESOLUTION ☐ OTHER

Date Submitted: 10/09/2017 Work Session: 10/11/2017 Council Meeting: 10/16/2017

SUBMITTED BY: Attorney Laura Cosgray

PURPOSE: This resolution will establish the Educational Advisory Committee for the City of Stonecrest. The Mayor and City Council have determined that it is in the best interest of the City and its citizens to establish the Educational Committee for studying educational matters of the city.

HISTORY:

FACTS AND ISSUES:

OPTIONS:

RECOMMENDED ACTION: Recommendation of the Mayor and Council

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF STONECREST

RESOLUTION 2017-10-_____

**A RESOLUTION TO ESTABLISH THE EDUCATION ADVISORY COMMITTEE OF
THE CITY OF STONECREST, GEORGIA**

WHEREAS, the City of Stonecrest was created by Senate Bill 208, passed in the Georgia General Assembly during the 2016 Session and subsequently confirmed by referendum;

WHEREAS, Senate Bill 208 provided a charter for the City of Stonecrest (the "City Charter");

WHEREAS, Section 1.03(b)(42) of the City Charter grants the City the power to exercise and enjoy all other powers, functions and rights necessary or desirable to promote the general welfare of the City and its inhabitants;

WHEREAS, Section 2-137 of Chapter 2 of the Code of the City of Stonecrest, Georgia, provides that the mayor may establish advisory committees; and

WHEREAS, the Mayor and City Council of the City of Stonecrest have determined that it is in the best interest of the City and its citizens to establish the Education Advisory Committee of the City of Stonecrest, Georgia, for the purpose of studying educational matters of the City.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Stonecrest as follows:

**SECTION I.
ESTABLISHMENT OF THE EDUCATION ADVISORY COMMITTEE AND
AUTHORIZATION**

1. There is hereby established the Education Advisory Committee of the City of Stonecrest, Georgia (the "Education Committee").
2. One or more councilmembers may be a member of the Education Committee.
3. The city manager or a designee shall oversee the meetings of the Education Committee and shall be an ex-officio, non-voting member of the Education Committee.

**SECTION II.
DUTIES**

1. The Education Committee shall study and research educational matters of interest and import related to the City, and may, from time to time, offer written recommendations to the City Council after the conclusion of such study and research.
2. Members must attend two-thirds of the Education Committee meetings in a calendar year. Failure to do so warrants removal from the Education Committee.

SECTION III. MEMBERSHIP

1. Except as provided in subsection (2) of this Section III, the Mayor shall establish qualifications for members of the Education Committee. Each committee person shall be nominated by the Mayor and approved by the City Council.
2. Each Education Committee member must be either a resident of the City, a member of the City Council or an owner or officer of a business domiciled in the City. Should the Education Committee member move out of the City or no longer be an owner or an officer of a business domiciled in the City, he/she may remain active until the Mayor and City Council appoint his/her replacement.

SECTION IV. TERMS

1. Each Education Committee member shall serve until the succeeding end of the City's fiscal year. Consecutive terms are permissible.
2. Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible. Members whose terms expire shall continue to serve until a replacement is appointed or a consecutive appointment is made.
3. Any member may be removed with or without cause by the Mayor.

SECTION V. COMPENSATION

Education Committee members may serve without compensation. Reasonable expenses for travel may be reimbursed and Education Committee members may be compensated pursuant to a policy to be established by the City Manager and approved by the City Council.

SECTION VI. QUORUM

A majority of the actual number of Education Committee members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

SECTION VII. GOVERNANCE

1. The Education Committee shall adopt its rules of procedure, which shall be substantially similar to the rules of procedure of the City Council, and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of the Mayor and Council.
2. All meetings at which official action is taken shall be open to the public and all records maintained by the Education Committee shall be public records unless expressly exempted by a provision of the state's Open Records Act. The Education Committee shall keep

minutes of its proceedings, showing the vote of each member upon each question, and records of its examinations and other official actions, all of which shall be filed in the office of the City Clerk. Copies of the minutes shall be sent to the Mayor and each member of the City Council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by the state open meetings and open records acts.

3. Expenditures of the Education Committee, if any, shall be within the amounts appropriated for the purpose intended by the Mayor and City Council during the annual budgeting process.

SECTION VIII. INITIAL MEMBERS

The initial members of the Education Committee shall be as follows:

1. Dr. Barbara Lee
2. Pamela Childs
3. Sandra Harris
4. Andrew Wells
5. Nicole Prater
6. Johnny Waits
7. Dr. Lisa Bratton
8. Paul Pierre
9. Keenja Dennis

This Resolution shall be effective immediately upon its adoption.

SO RESOLVED AND EFFECTIVE this the ____ day of October, 2017.

Jason Lary, Sr., Mayor

Attest:

City Clerk